The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the repeal of §§39.402, 39.404, and 39.606; proposes new §39.402; and also proposes amendments to §§39.106, 39.403, 39.405, 39.409, 39.411, 39.418 - 39.420, 39.501, 39.551, 39.601 - 39.605, 39.651, 39.653, and 39.709.

The following new and amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP): §§39.402(a)(1) - (3) and (5) - (9), 39.405(f)(3) and (g), (h)(1)(A) - (4), (6), (8) - (11), (i) and (j), 39.409, 39.411(e)(1) - (5)(B) and (6) - (10), (11)(A)(i) and (iii) and (iv), (12) and (15), and (f) - (h), 39.418(a), (b)(2)(A) and (c), 39.419(e), 39.420 (c) - (e) and (h), 39.601, 39.602, 39.603, 39.604, and 39.605.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

PRIOR SIP SUBMISSIONS

Certain sections and subsections of the rules regarding public participation for air quality permit applications were previously submitted to EPA as revisions to the SIP on October 25, 1999, July 31, 2002 and March 9, 2006. The sections submitted in 1999, as part of the implementation of House Bill (HB) 801 (76th Legislature, 1999) which is discussed more fully later in this preamble, were §39.201; §39.401; §39.403(a) and (b)(8) - (10); §39.405(f)(1) and (g); §39.409; 39.411(a), (b)(1) - (6) and (8) - (10) and (c)(1) - (6) and (d); §39.413(9), (11), (12), and (14); §39.418(a) and (b)(3) and (4); §39.419(a), (b), (d), and (e); §39.420(a), (b), and (c)(3) and (4); §39.423(a) and (b); §39.601; §39.602; §39.603; §39.604; and §39.605. The sections submitted in 2002 were new §39.404, and amended §§39.411, 39.419, 39.420; 39.603, 39.604, and 39.606. The sections submitted in 2005 were amended §39.403(b)(8) - (10) and new (f); §39.411(a), (b)(1) - (6), (8) - (10), (c)(1) - (6), and (d); §39.419(a), (b), (d), and (e); and §39.420(a),

(b), and (c)(3) and (4). In 2005, the commission also proposed to submit the repeal of §39.404, and the newly adopted §39.404, and to withdraw §§39.411, 39.419, and 39.420 as submitted in 2002.

Subsequently, the commission conducted two rulemakings that concern public participation for air quality permit applications which were not submitted as revisions to the SIP. The first was the implementation of HB 2518 (77th Legislature, 2001), relating to the issuance of certain permits for the emission of air contaminants, by adding new §39.402. The second rulemaking amended alternate language publication requirements in §39.405(h), as well as amendments to §39.604 and §39.605. Therefore, to ensure that current versions of the necessary and appropriate rules are submitted to EPA as revisions the SIP, the commission ~~is~~ proposes to withdraw all sections previously submitted as listed earlier and to submit the following sections as revisions to the SIP: §§39.402(a)(1) - (3) and (5) - (9), 39.405(f)(3) and (g), (h)(1)(A) - (4), (6), (8) - (11), (i) and (j), 39.409, 39.411(e)(1) - (5)(B) and (6) - (10), (11)(A)(i) and (iii) and (iv), (12) and (15), and (f) - (h), 39.418(a), (b)(2)(A) and (c), 39.419(e), 39.420(c) - (e) and (h), 39.601, 39.602, 39.603, 39.604, and 39.605. In addition, §39.407 will be submitted to the EPA as a revision to the SIP.

HOUSE BILL 801

In September and October 1999, the commission conducted rulemaking to implement HB 801, adopted by the 76th Legislature to be effective September 1, 1999. HB 801 established new procedures for public participation in multi-media environmental permitting proceedings. It established procedures for providing public notice, an opportunity for public comment, and an opportunity for public hearing for certain actions. This legislation allowed the commission by rule to provide any additional notice, opportunity for public comment or opportunity for hearing as necessary to satisfy air quality federal

program authorization requirements, and in 1999, these changes were implemented in various chapters of the commission's rules, including Chapter 39. This effort complimented the commission's ongoing effort to consolidate agency procedural rules and make certain processes consistent among different agency programs and media.

HB 801 revised the commission's procedures for public participation in environmental permitting by adding, among other things, new Texas Water Code (TWC), Chapter 5, Subchapter M; and by revising the Texas Clean Air Act (TCAA), §382.056 in the Texas Health and Safety Code (THSC). The changes in law made by HB 801 apply to certain permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999.

Specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an applicant to publish newspaper notice of intent to obtain a permit 30 days after declaration of administrative completeness. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county, and, in most cases, to publish newspaper notice of the executive director's preliminary decision of the application. In addition, the bill requires the commission to establish by rule the form and content of the notices and to mail notice to certain persons. It also requires the executive director to hold public meetings regarding applications which are required, if requested by a legislator, or if the executive director determines there is substantial public interest in the proposed activity. The executive director is also required to prepare responses to relevant and material public comments received in response to the notices or at public meetings, and file the responses with the chief

clerk. It requires the commission to prescribe alternative cost-effective procedures for newspaper publication for small business stationary sources seeking air emissions authorization that will not have a significant effect on air quality. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment or opportunity for hearing as necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes are implemented in 30 TAC Chapters 39, 50, 55, and 80 by consolidating the rules for public participation for various air quality, water quality and waste applications. For air quality applications, the changes were newly added to these chapters rather than amend the existing rules Chapter 116, which contains the rules for the new source review permitting program.

EPA REVIEW OF SUBMITTED RULES

On November 26, 2008, the EPA proposed simultaneous limited approval and limited disapproval of revisions to the applicable implementation plan for the State of Texas which relate to public participation for air quality permit applications for new and modified sources (*Federal Register* notice of November 26, 2008, hereinafter referred to as "Public Participation Notice"). With noted exceptions, this proposed limited approval and limited disapproval affects portions of SIP revisions submitted by the commission on December 15, 1995; July 22, 1998; and October 25, 1999 (See 73 *Federal Register* 72001). EPA found that these revisions, as a whole, strengthen the SIP as compared to the provisions in the existing SIP (located in 30 TAC §§116.130 - 116.137). However, EPA also found that these rules do not meet all of the minimum federal requirements that relate to public participation. The TCEQ filed comments in response to this notice. In addition, the executive director's letter to EPA dated October 23, 2009 commits to proposal of this rulemaking on December 9, 2009. This proposal is intended to address EPA's concerns

as set forth in the Public Participation Notice and submit rule amendments that are approvable as a revision to the Texas SIP, and the text of the SECTION BY SECTION DISCUSSION portion of this preamble incorporates EPA's concerns and the commission's responses to those concerns.

At the time the rules were adopted, the commission stated that, generally, the amendments made by HB 801 are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for hearing are provided.

Based on the Public Participation Notice, the commission has determined that to meet the minimum requirements of federal law for public participation for air quality permit applications, amendments to the established rules implementing the various state legislation described above, are necessary.

DESCRIPTION OF THE CURRENT PROCESS FOR PUBLIC PARTICIPATION FOR AIR QUALITY PERMIT APPLICATIONS

Due to the comprehensive nature of the requirements of HB 801 (76th Legislature, 1999), the commission's permitting process is frequently referred to as the "HB 801" process. The vast majority of air, waste, and water quality permit applications received by the commission are subject to the procedural requirements of HB 801. A brief description of that process for air applications follows. As there are a number of possible scenarios depending on the type of permit, this discussion focuses on the basic HB 801 process. Additionally, in its Public Participation Notice, EPA states "for a new or modified source subject to PSD, the revised rules do not contain a definition of a final appealable decision for a PSD permit" (see 73 *Federal Register* 72008). EPA goes on to state that it would like "further information about how and when commenters are informed of the agency's final decision, access to the response to

comments (RTC) and timing for judicial appeal, in order to provide an opportunity for State court judicial review" (see 73 *Federal Register* 72008). The following discussion also addresses those issues. The SECTION BY SECTION DISCUSSION of this preamble for §55.156, Public Comment Processing, in the concurrent proposal preamble discusses in greater detail EPA's issue regarding access to the RTC.

Notice of Receipt of Application and Intent to Obtain Permit (First notice): Permit applications received by the TCEQ undergo an administrative review by staff to determine whether the applicant has submitted all of the initially required parts of the application. Within 30 days after the application is declared administratively complete, the applicant is required to publish the Notice of Receipt of Application and Intent to Obtain Permit (NORI) in a newspaper. The NORI describes the location and nature of the proposed activity, lists agency and applicant contacts for obtaining additional information, and gives the location in the county where a copy of the application can be viewed and copied. In some cases, the applicant may also have to publish the notice in other languages. Applicants must post signs with application and contact information around the property. Mailed notice to persons on the mailing list and others is also provided by the chief clerk. The NORI provides instructions for submitting comments, getting on the mailing list, requesting a public meeting, and requesting a contested case hearing. The instructions explain that in order for an issue to be considered at a contested case hearing, it must first be raised in a comment or in a request for a contested case hearing during the time specified in the published notice.

Notice of Application and Preliminary Decision (Second notice): After the application has been determined to be administratively complete, it undergoes a technical review to determine whether it satisfies state and federal regulatory requirements. For certain types of permits, after technical review is

complete, the executive director issues his preliminary decision. The applicant is then required to publish a second notice, called the Notice of Application and Preliminary Decision (NAPD), in a newspaper and the notice is also mailed to persons who timely filed public comment or hearing requests and to persons on the mailing list. The NAPD contains information regarding the review of the application and provides an additional opportunity to submit comments, request a public meeting and/or contested case hearing, or request to be added to the mailing list.

Second notice is currently required for an air quality permit application for a minor source (or a registration for a concrete batch plant standard permit) *only* when a request for a contested case hearing was made during the first notice (NORI) period and was not withdrawn before the preliminary decision was issued. If no contested case hearing has been requested, the comment period ends 30 days after the date of publication of the NORI. For all major sources of air pollution which require a Prevention of Significant Deterioration (PSD) or nonattainment permit, publication of the NAPD is required, regardless of whether or not contested case hearing requests are received for the permit application. This rulemaking would expand the requirement to publish the NAPD to all minor source applications. This is more fully discussed later in the SECTION BY SECTION DISCUSSION portion of this preamble.

Response to comments: After the public comment period closes, the executive director is required to review and respond to all timely, relevant and material or significant filed comments in a formal RTC prior to issuance of the permit. The TCEQ's practice is to respond to all comments. The staff considers all timely filed comments to determine whether any issues raised require changes to the preliminary decision and/or proposed permit. The RTC and the executive director's preliminary decision are mailed to the applicant, and any person who submitted comments during the public comment period, timely filed a

contested case hearing request, or requested to be on a mailing list for the permit application.

Mailing list for notice: Interested persons can receive future public notices by requesting to be placed on either the permanent mailing list for a specific applicant name and permit number or the permanent mailing list for a specific county which includes all air, water, and waste permit notices in that county. Persons who submit a comment, request a public meeting, or request a contested case hearing regarding a specific application, are automatically added to the mailing list for that specific permit application.

Public meeting: Public meetings provide the public with an opportunity to learn about the application, ask questions of the applicant and TCEQ, and offer formal comments. It also allows TCEQ staff to hear firsthand the concerns and objections of the community and gather input for use in the agency's consideration of the application. Currently, the TCEQ will hold a public meeting if there is significant interest in an application, if requested by a legislator from the area of the proposed project, or if otherwise required by law. This rulemaking will add the requirement that for some types of permits, including PSD and nonattainment, that a meeting will be held upon request of an interested person. A request for a public meeting must be submitted to the chief clerk during the public comment period.

Request for contested case hearing: If comments were filed during the comment period, there may be an opportunity to request a contested case hearing. Currently, for there to be an opportunity for a contested case hearing, a request for a contested case hearing must be received during the NORI comment period for applications for minor sources of air pollution. For major sources of air pollution, the opportunity for a contested case hearing request to be made extends to the end of the comment period, with an additional opportunity to make the request for 30 days after the mailing of the executive director's RTC. A hearing

request must be based on issues that were raised during the comment period, in comments that were not withdrawn prior to the filing of the RTC. The person requesting a hearing must demonstrate that they are an "affected person" as defined in state law in order to be granted party status and challenge the executive director's preliminary decision on an application. Requests for contested case hearings must include among other pertinent information, a detailed explanation of how the requester would be adversely affected by the proposed facility or activity in a manner not common to the general public. If the request is made on behalf of a group or an association, the request must identify one or more members who are affected persons, and state how the interest that the group or association seeks to protect is relevant to the group's purpose. The request for hearing must be received no later than 30 days after the date of the letter transmitting the executive director's preliminary decision and RTC, which is mailed out by the chief clerk. The TCEQ considers all contested case hearing requests received during the public comment period as well as those timely received after the RTC is filed and mailed.

Commission consideration of requests for reconsideration and contested case hearing: After the executive director's preliminary decision and RTC have been mailed, any person has the option of filing a request for reconsideration, which asks the commissioners to reconsider the executive director's decision. The request for reconsideration must be received no later than 30 days after the date of the decision letter. All timely filed requests for reconsideration and contested case hearing are considered at the commissioner's agenda meetings, except when the application is directly referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing. At these meetings, the commissioners consider contested case hearing requests, response and reply briefs, the executive director's RTC, and applicable statutes and rules and decide whether they will grant or deny the contested case hearing requests and requests for reconsideration. If the commission decides to grant a request for a contested

case hearing, the case is referred to SOAH with a list of issues to be the subject of the hearing and an expected duration for the hearing.

Contested case hearing: A contested case hearing is a legal proceeding similar to a civil trial in state district court. Hearings are conducted by the SOAH, an independent agency that conducts hearings for state agencies. Contested case hearings can take place either when referred to SOAH by the commission, or when an application is directly referred to SOAH, usually by the applicant. When a contested case is referred to SOAH, an administrative law judge will preside over the hearing and will consider evidence in the form of sworn witness testimony and documents presented as exhibits. At the conclusion of the SOAH hearing, the judge issues a proposal for decision with proposed findings of fact and conclusions of law, which is submitted to the TCEQ for formal consideration by the commission. The commission then approves, denies, or modifies the proposal for decision.

For minor sources of air pollution, if there are comments but no contested case hearing requests in response to the first notice (NORI), the executive director will respond to comments, but there is no longer an opportunity to request a contested case hearing. Persons wishing to protest the granting of the permit must file a motion to overturn.

Motion to overturn: If no request for contested case hearing or reconsideration is received and the executive director issues the uncontested permit, any person may file a *motion to overturn* requesting that the commission overturn the executive director's action. The motion must be filed no later than 23 days after the date the agency mails notice of the signed permit, and must explain why the commission should review the executive director's action. If a motion to overturn has not been acted on by the commissioners

within 45 days after the date the agency mails notice of the signed permit, the motion is overruled by operation of law, unless an extension of time is specifically granted. In the case of an uncontested permit application that is issued by the executive director, agency rules require the chief clerk to send the executive director's RTC along with notice that the permit has been signed to appropriate persons including all who timely filed public comments. That letter also explains that a motion to overturn can be filed for the commission's consideration, and that an appeal may be filed in state district court in Travis County, Texas.

Protesting a commission approved permit: For a contested permit, i.e., one for which a contested case hearing was requested and the permit was subsequently issued by the commission either after denial of all hearing requests or after a contested case hearing, the rules also require the chief clerk to send the order and notice of the action to a list of persons including those who timely filed public comment. If the commission adopts a change to the executive director's original RTC, the rules require the chief clerk to include this final RTC with the notice of the commission's action. In matters where the commission makes no changes to the executive director's RTC, in accordance with the rules, the chief clerk would have previously transmitted the executive director's RTC to appropriate persons including commenters who subsequently receive the order and notice of action. The letter transmitting the order and notice of commission action explains that a motion for rehearing of the commission's action can be filed. A motion for rehearing is a prerequisite to appeal.

Judicial review: Access to judicial review for air quality permits is governed by THSC, §382.032. Generally, a person must comply with the requirement to exhaust the available administrative remedies prior to filing suit in district court. In addition, EPA has approved the Texas Title V Operating Permit

Program, which required the submission of a Texas Attorney General opinion regarding sufficient access to courts, in compliance with Article III of the United States Constitution. The Attorney General Opinion specifically states that "{a}ny provisions of State law that limit access to judicial review do not exceed the corresponding limits on judicial review imposed by the standing requirement of Article III of the United States Constitution." The state statutory authority cited in support of the Texas Title V Operating Program includes THSC, §382.032, which is the underlying authority for the appeal of Texas' air quality permit actions, including PSD permitting program. Therefore, the Texas Attorney General statement regarding equivalence of judicial review based on THSC, §382.032 in accordance with Article III of the United States Constitution is also applicable for every action of the commission subject to the TCAA, including PSD permit decisions.

OVERVIEW OF THE PROPOSED AMENDMENTS AND RELATED RULEMAKING

This rulemaking, in Chapters 39, 55, and 116 includes significant changes to the existing public participation process for air quality permit applications. The first is the expansion of the scope of applications that are subject to NAPD to all air quality permit applications, except certain permit renewal applications; the commission is no longer excluding minor new source review (NSR) applications from this notice requirement when no request for a contested case hearing is received by the commission, or such request is withdrawn. This addresses EPA's concerns regarding opportunity for the public to comment on the executive director's draft permit and air quality analysis for new or modified minor NSR sources or minor modifications at major sources. There is no change in the commission's procedure for requesting a contested case hearing for any air quality applications that are currently subject to a request for contested case hearing. For air quality minor NSR permit applications, the opportunity to request a contested case hearing continues to be contingent upon a request for such a hearing being received during

the comment period for the NORI. If a request for a contested case hearing is received during the NORI comment period for these applications, then the opportunity to request a contested case hearing for 30 days after the executive director's RTC is mailed continues to apply. If, however, no requests for a contested case hearing are received during the comment period for NORI, then there is no further opportunity to request a contested case hearing for an air quality permit for a minor source. Importantly, however, the NAPD for minor NSR applications is required with an opportunity for public comment as well as an opportunity to request a public hearing. For major sources, the opportunity to request a contested case hearing is open until the end of the NAPD comment period, or, if timely comments are filed, for 30 days after the executive director's RTC is mailed. Second, the commission is ensuring that all persons to whom notice must be given, and specific notice content, are specifically set forth in the rules. In addition, because EPA expressed concern in the Public Participation Notice about portions of previously submitted rules applying to media other than air, or including rules that cite cross references that are not submitted as SIP revisions, the rules are revised to segregate certain requirements for air quality permits where necessary for SIP approval. It should be noted that not all of the rules that apply to air quality permitting are proposed to be submitted as a SIP revision. Rather, the commission proposes those sections, or portions of sections that meet minimum federal requirements or meet the requirements of the existing Texas SIP, as revisions to the SIP.

Concurrently with this proposal, and published in this issue of the *Texas Register*, the commission is proposing amendments to 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 60, Compliance History; and Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. The proposed amendments to Chapter 55 require the executive director to hold a public meeting when requested by any interested person for applications for

PSD or nonattainment permits, and update the type of application available for concrete batch plants that are subject to the public participation requirements in Chapter 55. Finally, the rules specify that before any air quality permit application for a PSD and nonattainment permit is approved, the executive director shall prepare a response to all comments received. The commission is also proposing to withdraw certain sections and resubmit certain sections in Chapter 55 as revisions to the SIP. The primary objective of this rulemaking is to obtain SIP approval for the public participation requirements and process for the commission's NSR air quality permitting program.

The commission is proposing amendments to Chapter 60 to update cross-references that have changed as part of this rulemaking.

The commission is also concurrently proposing amendments to certain sections in Chapter 116 to ensure that the public participation requirements for Plant-wide Applicability Limit (PAL) permits meet state and federal public participation requirements. In addition, the amendments update cross-references.

The new and amended rules in these four chapters should be considered together, since all changes are necessary to achieve the goal of SIP approval and the increased public participation opportunities.

SECTION BY SECTION DISCUSSION

Because this rulemaking is intended to revise the commission's rules to obtain SIP approval for its air quality permitting program (exclusive of the Federal Clean Air Act (FCAA) Title V portion), the commission will not respond to comments regarding the public participation requirements for other media not addressed in this rulemaking. However, the commission will accept comments regarding the proposed

updated cross-references in the rules that are not applicable to air quality permit applications.

Section 39.106, Application for Modification of a Municipal Solid Waste Permit or Registration

The commission proposes to amend §39.106(a) to update the cross-reference to §39.411(b)(1) - (3), (6), (7), (9), and (12) as §39.411(b)(1) - (3), (6), (7), (9), and (11).

Section 39.402, Applicability to Air Quality Permits and Amendments

The commission proposes the repeal of existing §39.402 and simultaneously proposes new §39.402. The proposed new section would consolidate the rules for the types of applications subject to notice requirements in Chapter 39, Subchapters H and K currently listed in §39.402 and §39.403(b)(8) - (10) and (13). In the consolidation, the commission is not carrying forward the references to certain types of permit applications for which the deadline to submit those applications has passed. Specifically, those references are in existing §39.404(a), and include grandfathered facilities, electric generating facilities, and existing facilities permits. No applications for these types of permits remain pending.

The commission proposes new §39.402(a), which would require applications for air quality permits and permit amendments be subject to Chapter 39, Subchapters H and K. The specific types of applications that are subject to these various requirements are listed in subsection (a)(1) - (9).

Proposed new §39.402(a)(1) lists permits and permit amendments that must obtain a permit pursuant to THSC, §382.0158. This is moved from existing §39.403(b)(8). In the Public Participation Notice, EPA objected to the statutory cross-references in §39.403(b)(8) as non-SIP provisions, and requested the commission remove or change the references to SIP-approvable references. However, EPA has approved

rules in other states that also contain statutory references. Specifically, in the notice, EPA points out the state rules of Alaska and Oregon as examples of rules that have been approved by EPA. A cursory examination of the rules of those states, however, reveals statutory references within the EPA approved rules. For example, the Alaska rules 18 Alaska Administrative Code (AAC) §50.200 and §50.311 reference Alaska Statutes (AS) §§46.03, 46.14, and 46.14.180. The Oregon rule for Public Participation, Oregon Administrative Rules (OAR) 340-209-0080, is also EPA approved, and yet it references Oregon Revised Statutes, §§183.413 - 183.470.

The references to THSC, §382.0518 and §382.055 in §39.402(a)(1) and (3), respectively, specify the statutorily defined types of facilities that are subject to the rule. These specific statutory provisions are the underlying authority for the commission to require that a permit be obtained before a facility may begin construction, or apply for renewal of such an air quality permit. Although EPA does not approve or disapprove state legislative actions that result in such statutes, without the underlying authority, the commission could not require anyone to obtain a permit before constructing or operating. Submittal of a SIP is contingent on a state or state agency having the delegated authority from the legislature to act (FCAA, §110(a)(2)(E)(i)). The commission has been delegated this authority under the TCAA, and the specific sections referenced in the rule specify which types of applications are subject to this rule. Therefore, the commission has not revised the rule to make the requested change.

In proposed new §39.402(a)(1), the commission would specifically list applications for the initial issuance of flexible permits. In the September 23, 2009, notices, EPA stated concerns about notice requirements for flexible permits. EPA specifically stated that, for initial issuance of a flexible permit to establish a minor NSR applicability cap or an increase in a flexible permit cap, the rules do not require 30-day notice

and comment on information submitted by the owner or operator and the agency's analysis of the effect of the permit on ambient air quality, including the agency's proposed approval or disapproval as required by 40 Code of Federal Regulations (CFR) §51.161. Flexible permits applications, like other minor NSR applications, are subject to publication of NAPD. Proposed new §39.402(a)(1) and (2) specify that initial issuance and amendments of flexible permits are subject to the public participation requirements of Chapter 39. EPA also commented that where PSD and nonattainment permit terms and conditions are modified or eliminated when the permit is incorporated into a flexible permit, the rules do not require public participation consistent with 40 CFR §51.161 and §51.166(q). The proposed changes in this rulemaking clarify the applicable notice requirements for both initial issuance and amendments of flexible permits.

Proposed new §39.402(a)(1)(A) and (B) would specify that applications for permits and permit amendments apply when a permit action involves construction of any new facility or a modification of an existing facility. These are moved from existing §39.403(b)(8)(A) and (B).

In proposed new §39.402(a)(2), applications for certain air quality amendments are subject to the requirements of Chapter 39, Subchapters H and K. Subparagraphs (A) and (B) are moved from existing §39.403(b)(8) and (8)(A).

In proposed new §39.402(a)(2)(C), the commission relocates existing text in §39.402(a)(1), regarding amendments when there is a change in character of emissions or release of an air contaminant not previously authorized.

In proposed new §39.402(a)(2)(D), the commission relocates existing text in §39.402(a)(3). This implements HB 2518 (77th Legislature, 2001), which added THSC, §382.0518(h), which provides that for certain permit amendments, the public participation requirements of THSC, §382.056 do not apply if the total increase for all facilities authorized under the amended permit will meet the commission's *de minimis* criteria, and the emissions do not change in character. In the existing rule, the commission established those criteria, and therefore would remain the same in proposed new subsection (a)(2)(D).

In proposed new §39.402(a)(2)(E), the commission relocates existing text in §39.402(a)(2) and §39.403(b)(8). This implements HB 2518 (77th Legislature, 2001), which added new THSC, §382.0518(h), which provides that permit amendments that the public participation requirements of THSC, §382.056 do not apply if the total increase for all facilities that are affected by THSC, §382.020 (relating to control of emissions from facilities that handle certain agricultural products) authorized under the amended permit will not be significant and will not change in character. In the existing rule, the commission established the significance levels, which are the same as in §106.4(a); these would remain the same in the proposed rule.

In the Public Participation Notice, EPA commented that, under §39.403(b)(8), for a minor NSR permit amendment or minor modification under §116.116(b), (where there is a change in the method of control of emissions; a change in the character of the emissions; or an increase in the emission rate of any air contaminant) the existing SIP requires the permit holder to apply for and receive approval of a permit amendment. However, the revised rules do not require any public participation as required by 40 CFR

§51.161(a) and (b) unless the change involves construction of a new facility or modification of an existing facility that results in an increase in allowable emissions equal to or greater than 250 tons per year (tpy) of carbon monoxide (CO) or nitrogen oxides (NO_X) or 25 tpy of volatile organic compound (VOC) or sulfur dioxide (SO_2) or particulate matter (PM_{10}); or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen or other changes within the discretion of the executive director. The commission responds that EPA has approved into the SIP TCEQ's air quality permit by rule (PBR) program, as specified in Chapter 106, Subchapter A; see 68 *Federal Register* 64548 (November 13, 2003). Therefore, the exclusion of notice requirements for increases that are less than significant is consistent with the approved SIP.

In proposed new §39.402(a)(2)(F), the commission would relocate existing text in §39.402(a)(4) and §39.403(b)(8)(C). This new paragraph would provide for applications to be subject to the notice requirements of Chapter 39, Subchapters H and K when the executive director determines that there is a reasonable likelihood for emissions to impact a nearby sensitive receptor or there is a reasonable likelihood of high nuisance potential from the operation of the facilities. It would also apply when an application involves a facility with a poor compliance history rating, or when there is a reasonable likelihood of significant public interest in a proposed activity.

In proposed new §39.402(a)(3), the commission would relocate text regarding renewal applications from §39.403(b).

In proposed new §39.402(a)(4), the commission would relocate text from §39.403(b)(9), which states that applications for hazardous air pollutant permits are subject to the notice requirements of Chapter 39, Subchapters H and K.

In proposed new §39.402(a)(5), applications for the establishment or renewal of, or an increase in, a PAL permit under Chapter 116 are subject to the requirements of Chapter 39, Subchapters H and K. In the Public Participation Notice (73 *Federal Register* at 72012), EPA commented that for PALs for existing major stationary sources, there is no provision that PALs be established, renewed, or increased through a procedure that is consistent with 40 CFR §51.160 and §51.161, including the requirement that the reviewing authority provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment, consistent with the Federal PAL rules at 40 CFR §51.165(f)(5) and (11) and §51.166(w)(5) and (11).

In addition, in its September 23, 2009, notice (74 *Federal Register* at 48474 - 48475), EPA stated that the commission's rules for PAL permit applications were deficient, specifically because the rules do not include a 30-day period for submittal of public comment, consistent with the Federal PAL rules at 40 CFR §51.165(f)(5) and (11) and §51.166(w)(5) and (11). EPA also commented that the rule applicability section in §39.403 does not include PALs, despite the cross-reference to Chapter 39 in §116.194. In response, the commission proposes new subsection (a)(5), which adds PAL applications to the list of types of applications subject to notice and clarified the public participation requirements for these permits. Specifically, applications for establishment or renewal of, or an increase in, a PAL permit would be required to comply with the requirements in Chapter 39.

In proposed new §39.402(a)(6), the commission would relocate text regarding multiple plant permit (MPP) applications from §39.403(b)(13).

In proposed new §39.402(a)(7), the commission would relocate applicability for Future Gen permit applications from existing §39.404(b)(2). That section is proposed for repeal.

In proposed new §39.402(a)(8), the commission has relocated and updated the text of §39.403(b))(10) and updated the citation to the current type of authorization that is available for concrete batch plants that are subject to the public participation requirements in THSC, §382.056.

In proposed new §39.402(a)(9), applications for change of location of portable facilities would be subject to certain notice requirements of Subchapters H and K. Proposed new §39.402(a)(9) codifies existing commission guidance and practice on notice requirements for the change of location of portable facilities pursuant to THSC, §382.056(r). See "Guidance Memo for the Relocations and Change of Locations of Portable Facilities," September 10, 2008, from Richard Hyde, P.E., Director, TCEQ Air Permits Division to Air Permits Staff, Field Operations Staff, and Interested Applicants, which can be found at *http://www.tceq.state.tx.us/assets/public/permitting/air/memos/portable_memo_9_10_08.pdf*. In a separate rulemaking action, the commission has proposed to adopt §116.20 and §116.178 regarding changes of location of portable facilities (34 *Texas Register* 6281, September 11, 2009). If the commission adopts those sections prior to consideration of adoption of these rule amendments, the new rules will be referenced in this subsection.

The commission proposes new §39.402(b), that would provide that unless otherwise stated in this chapter, applications for air quality permits and permit amendments filed before July 1, 2010, are governed by the rules in Chapter 39, Subchapters H and K as they existed immediately before July 1, 2010, and that those rules are continued in effect for that purpose.

The commission proposes new §39.402(c), which would relocate text from existing §39.403(c)(4) - (6). This section states that applications for federal operating permits and standard permits (other than those specified in proposed new §39.402(a)(8)), and registrations for permits by rule are not subject to the requirements of Chapter 39, Subchapters H and K.

Section 39.403, Applicability

The commission proposes to amend subsections (a), (a)(1) and (b) to segregate references to Subchapter K.

In subsection (b), the commission proposes to delete the types of applications subject to notice requirements in Chapter 39, Subchapters H and K currently listed in §39.402(b)(8) - (13). Except for Voluntary Emission Reduction Permits (VERPs), Electric Generating Units (EGUs), and MPPs, currently included in §39.402(b)(11) - (13), the commission is relocating these to proposed new §39.402. The restructuring results in relettering remaining subsection (b)(14) as subsection (b)(8). Existing §39.403(c)(4) - (6) is proposed to be relocated to proposed new §39.402(c)(1) - (3), and the subsequent paragraphs are proposed to be relettered as subsection (c)(4) - (12).

Existing §39.403(d), which is proposed for repeal, refers to types of permits no longer issued by the commission, including VERPs, EGUs, and MPPs for which applications were filed before September 1, 2001. Therefore, it is appropriate for the commission to omit this outdated language from the rule. Existing subsection (e) is proposed to be relettered as subsection (d). Existing subsection (f) is proposed to be relocated to proposed new §39.402(a)(7).

Section 39.405, General Notice Provisions

The commission proposes several amendments to §39.405 for the purpose of segregating requirements for air quality permit applications from the other types of applications that are subject to this section. As discussed earlier, the commission is eliminating references to other programs that are not subject to the requirements of the FCAA, and therefore, cannot be approved as a revision to the SIP. The first proposed change is to segregate out references to Subchapter K in subsections (a) and (e). The commission proposes to relocate the existing requirements regarding failure to publish notice in subsection (a) and the notice and affidavit requirements of subsection (e) to proposed subsections (i) and (j). As part of this restructuring, the commission proposes to relocate the last sentence of subsection (f)(1) to proposed subsection (f)(3).

The commission proposes to amend subsection (h)(1) by segregating air quality applications from other applications by splitting paragraph (1) into proposed subparagraphs (A) and (B).

The commission also proposes to update the cross reference in §39.405(h)(2)(C). Effective September 17, 2007, the Texas Education Agency amended 19 TAC §89.1205 by deleting subsection (g) regarding bilingual education program exceptions. The cross reference updates the new location for this

information, which was moved to new 19 TAC §89.1207.

Section 39.409, Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing or Notice and Comment Hearing

The commission proposes to amend §39.409 to update the title of the reference to §55.152.

Section 39.411, Text of Public Notice

The commission proposes to move the air requirements located in existing subsections (a) - (d) to proposed subsections (e) - (h). The commission proposes to add a statement to indicate that the requirements of that section for air quality permits are in subsections (e) - (h). In subsection (b), paragraph (10) would be deleted, and the remaining paragraphs would be renumbered as paragraphs (10) - (13), and the cross reference to existing subsection (b)(12) in subsection (c)(1) would be updated.

The commission proposes to repeat the requirements for text of public notice listed in existing subsection (b)(1) - (10) in proposed subsection (e)(1) - (11) and (13) - (14), with additional proposed text. Specifically, the commission proposes to specify in subsection (e)(4)(A)(i) that the executive director will respond to all comments submitted regarding PSD, nonattainment, and PAL permit applications when those applications are filed on or after July 1, 2010. In addition, the commission proposes to specify in subsection (e)(4)(A)(ii) that the executive director will respond to all comments submitted regarding hazardous air pollutants permit applications when those applications are filed on or after July 1, 2010. In proposed subsection (e)(5), the commission would add that, where applicable, the notice should include a statement that a public meeting will be held by the executive director if requested by an interested person for an application filed on or after July 1, 2010 for a PSD, nonattainment, PAL permit, or hazardous air

pollutant permit.

In proposed subsection (e)(11)(A), the commission would prescribe notice text regarding the period for which a contested case hearing can be requested for applications for PSD and nonattainment permits, hazardous air pollutant permits, permit renewals, as well as all other applications which are subject to a contested case hearing. Proposed subsection (e)(12) would require text regarding requesting a public meeting or notice and comment hearing, as applicable, for certain applications.

In proposed subsection (e)(11), subparagraph (F) is added to include the requirement to include in text of the NORI (first notice), that for minor NSR applications for which no hearing requests are received, or are received and withdrawn, then the applicant will publish the NAPD (second notice) that provides an opportunity to submit public comment and request a public meeting.

The commission proposes subsection (f), which provides that the chief clerk shall mail notice to the persons listed in §39.602, and text of notice must include the information listed in paragraphs (1) - (7). This includes a summary and public location of the executive director's preliminary decision and air quality analysis, as well as the location of the application. It also proposes requirements for text regarding public comment procedures, the deadline for filing comments or requesting a public meeting. It also states that for PSD applications, the text must include the degree of increment consumption that is expected from the source or modification. This addresses EPA's comment in the Public Participation Notice that for a new or modified source subject to PSD, the revised rules do not require that the public notice of a PSD permit contain the degree of increment consumption that is expected from the source or modification as required by 40 CFR §51.166(q)(2)(iii) and Clean Air Act, §165(a)(2).

In the Public Participation Notice, EPA expressed concern about the timely ability to determine the beginning and ending dates of the comment period. Existing text, which the commission now proposes to locate in §39.411(f)(5) requires that the text of the notice state the deadline to file comments. Comments are timely if received at any time after the application is filed with the TCEQ until the close of the comment period, which is never less than 30 days from date of initial publication. The TCEQ includes text of notice on its Web site from the time it is provided to applicants for publication, and makes every effort to include the actual date of the end of the comment period in its Web database for contested items. And, both EPA and the general public can call the TCEQ with questions about the close of the comment period. The commission’s current and proposed rules meet existing federal requirements, and any infrequent or non-existing delays due to mailing are not a reasonable or supportable basis for disapproval of TCEQ's rules.

Proposed subsection (f)(7)(D) also would specify that the notice text should include a statement that the executive director will hold a public meeting at the request of any interested person for PSD and Nonattainment permit applications. This, together with the concurrently proposed amendments to §55.154 is in response to EPA's comment in the Public Participation Notice comment that, for a new or modified source subject to PSD, the revised rules do not require the commission to provide an opportunity for a public hearing for interested persons to appear and submit written or oral comment on the air quality impact of the source, alternatives to it, the control technology required, and appropriate considerations and to provide notice of the opportunity for a public hearing, as required by 40 CFR §51.166(q)(2)(v) and Clean Air Act, §165(a)(2).

Proposed subsection (g) would specify text for a notice of public meeting, and would include a brief description of the public comment procedures.

Proposed subsection (h) would specify text of a notice for a contested case hearing.

Section 39.418, Notice of Receipt of Application and Intent to Obtain Permit

The commission proposes to amend §39.418(c) by segregating the requirements for air permits that are subject to the requirement to publish the NORI. The change would allow the commission to submit proposed subsections (a), (b)(2)(A), and (c) as revisions to the SIP.

Section 39.419, Notice of Application and Preliminary Decision

The commission proposes to amend §39.419 by restructuring subsection (e) to require publication of the NAPD for all applications other than renewals of air quality permits for which there is no proposed increase in emissions or change in character of emissions, and for which the applicant's compliance history is rated "poor" under the commission's compliance history rules. The existing rule lists which applications are not required to publish this notice. The commission makes this change to add this requirement for certain applicants who currently are not subject to this requirement, and to improve readability and understanding of the rule.

The expansion of the scope of which applications are subject to this requirement is based on comment from EPA. In its Public Participation Notice, EPA commented that under §39.419(e), for new or modified

minor NSR sources or minor modifications at major sources, the rules do not require public notice and the opportunity for comment on the state's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval, as required by 40 CFR §51.161(a) and (b), unless a contested case hearing is requested and not withdrawn after notice of application and intent to obtain a permit is published. The proposed change to the rule would no longer exclude applicants whose applications for new or modified minor NSR sources are not subject to a request for a contested case hearing.

In the Public Participation Notice, EPA commented that under §39.419(e)(1)(C), for any amendment, modification, or renewal of a major or minor source which require a permit application, the rules do not require public notice and the opportunity for comment on the state's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval, as required by 40 CFR §51.161(a) and (b), if the amendment, modification, or renewal would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted unless the application involves a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

The commission is not proposing any changes to the rules in response to this comment with regard to renewal applications for which there is no increase in allowable emissions. The executive director may, however, require such applications to publish NAPD if the application involves a facility for which the applicant has a poor compliance history. There are no requirements for renewal of permit under the EPA's

general permit rules, and therefore, there are no accompanying notice requirements. Further, the commission is prohibited by THSC, §382.056(g) from seeking comment for renewal applications for which there is no increase in allowable emissions beyond the comment period for NORI as required by §39.418. Further, the commissions's existing rules do not require publication of NAPD for any amendment or modification application for which there is no increase in allowable emissions and no new air contaminants not previously emitted.

Section 39.420, Transmittal of the Executive Director's Response to Comments and Decision

The proposed amendment to §39.420 would segregate certain requirements for air quality permit applications by amending subsection (a) to exclude those applications from the requirements of that subsection, which concerns the transmittal of the executive director's response to comments. Similar requirements for air quality applications are in proposed subsections (c) and (d). Existing subsection (c) is proposed to be relettered as subsection (e), and the commission proposes to delete references to permit applications for which the commission no longer issues permits, specifically VERPs, EGUs, and existing facility permits.

The commission proposes subsection (c)(1)(D) to add text, which currently exists in §55.156, as proposed clauses (i) and (ii). This specifies the text that must be included regarding instructions for requesting a contested case hearing for certain types of permit applications.

The commission proposes to amend §39.420(c) by adding paragraph (2) to address EPA's rule in 40 CFR §51.166(q)(2)(vi) and (viii) that requires the commission to make available comments and the final determination on the application available for public inspection in the same locations where the reviewing

preconstruction information was made available. The commission interprets this as a requirement that the RTC, which is a summary of the comments submitted on an application and the agency's response to those comments, and the issued permit, be made available in the local area. The commission proposes, in §39.420(c)(2) to codify its plans to make available all RTCs on its Web site. The commission anticipates this being established by January 2010. This rule change is in addition to its long-standing practices of maintaining a copy of the final permit at the commission's headquarters in Austin and at the appropriate regional offices, and, as required by rule, by mailing a copy of the RTC to all commenters, as well as any other interested persons who have asked to be included on a mailing list for a particular application. This rule change not only satisfies but exceeds the federal rule, and thus is at least as stringent. Concurrently, the commission is proposing similar rule amendments to §55.156.

The commission proposes to reletter existing subsection (c)(4) as subsection (e)(1) and existing subsection (c)(5) as subsection (e)(2). Proposed subsection (e)(2) would be amended to include the statutory text regarding the authorization for the commission's compliance history requirements. Existing subsections (d) - (f) will be relettered as subsections (f) - (h).

Section 39.501, Application for Municipal Solid Waste Permit

The commission proposes to amend §39.501(c)(2)(A) to update the cross-reference to §39.411(b)(1) - (9), (11), and (12) as §39.411(b)(1) - (11).

Section 39.551, Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge

The commission proposes to amend §39.551 to update the cross-reference to §39.411(b)(12) throughout

this section as §39.411(b)(11).

Subchapter K, Public Notice of Air Quality Applications

The commission proposes to amend the title of Subchapter K to add the word "Permit," such that the new title will be Public Notice of Air Quality Permit Applications. This change is to ensure consistency with rule text regarding air quality permit applications in Chapter 39, Subchapters H and K.

Section 39.601, Applicability

The commission proposes to add text for consistency with other amendments in this rulemaking. Specifically, the commission is revising the references of "air applications" to "air quality permit applications."

Section 39.602, Mailed Notice

The commission proposes subsection (a)(1) - (4) that lists the persons to whom mailed notice must be provided that are currently included only by cross reference to §39.413.

Section 39.603, Newspaper Notice

The commission proposes to add language to subsection (a) to clarify that the NORI under §39.418 is not required for PAL permit applications. The commission also proposes to update cross-references in subsections (c)(1) and (e) that is based on this rulemaking.

In the Public Participation Notice, EPA commented that the existing SIP has no provision for alternative public notice for small businesses, and that the provision in §39.603(e)(1)(A), now located in §39.603(d),

is a relaxation of the SIP. Specifically, the rule reviewed by EPA referred to a definition of "small business stationary source" in THSC, §382.0365. Since that rule was submitted to EPA, the TCAA has been revised. THSC, §382.056(a) now requires that the commission, by rule, shall prescribe alternative procedures for publication of newspaper notice if the applicant is both a small business stationary source as defined in TWC, §5.135 and will not have a significant effect on air quality. TWC, §5.135 establishes the commission's small business compliance assistance program as required by the FCAA, and it incorporates the definition of "small business stationary source" in FCAA, §507(c). The statute also requires that the alternative procedures must be cost-effective while ensuring adequate notice.

To implement this, the commission has adopted §39.602(d). It defines applicable small businesses as those meeting the definition in TWC, §5.135, and adds that the determination of whether the applicant's site is significant is based on the emission limits in §106.4(a), which is part of the Texas SIP. This subsection waives only one notice requirement, which is the newspaper display notice required by §39.603(c)(2). The primary purpose of this notice is to direct newspaper readers to the full notice in the public notice section of the newspaper. Therefore, waiver of this requirement does not diminish notice of detailed information regarding the application and the public participation procedures, while achieving the statutory requirement to adopt a cost-effective procedure. The display notice requirement is a procedural rule that has no counterpart in federal rules. The commission's adoption of this additional procedural requirement as revised will not interfere with the requirement for the commission to attain and maintain the national ambient air quality standards. Therefore, the commission disagrees that this alternative procedure constitutes a relaxation of the SIP.

Section 39.604, Sign-Posting

The commission proposes to update a cross-reference in subsection (e) that is based on this rulemaking. The commission proposes to amend §39.604 to update the cross-reference to §39.405(h)(7) in subsection (e) to §39.405(h)(8).

In the Public Participation Notice, EPA commented that it identified two provisions which relax the sign posting requirements in §39.604(c), and asked the commission to demonstrate how this rule is consistent with FCAA, §110(l). EPA has acknowledged that the sign posting requirements, in state rule since 1985, have no federal counterpart and exceed federal requirements. Further, both of the issues raised by EPA relate to text that is already part of a SIP-approved rule. See TCEQ's submission to EPA on August 31, 1993, and July 22, 1998. The text of these two issues is in §116.133, as approved by EPA into the SIP; see 71 *Federal Register* 12285 (March 10, 2006). However, further discussion may be helpful due to reorganization of the text when it was adopted as new §39.604 in 1999. First, in 1999, the term "thoroughfare" was replaced with "public highway, street or road" in subsection (c) when §39.604 was adopted. As explained in the TCEQ's proposal for this rule change (see 24 *TexReg* 5303, 5309 (July 16, 1999)) and the adoption preamble (see 24 *TexReg* 8190, 8218 (September 24, 1999)), these changes were made to clarify that a sign is not required to be posted on a waterway based on TCEQ Air Rule Interpretation Memo R6-133.001. The memo addresses the issue of what is meant by the undefined term "thoroughfare." It analyzed Texas law and determined that the term "thoroughfare" means a street or passage through which one can travel, or a street or highway affording an unobstructed exit at each end into another street or passage. Given this interpretation, and the fact that agency staff historically had not considered rivers or any water body a public thoroughfare and therefore no applicant had been required to post a sign on the shore of a river or water body, the new rule included this amended text.

Second, the rulemaking added the last sentence to subsection (c) in new §39.604 which states "{t}his section's sign requirements do not apply to properties under the same ownership which are noncontiguous or separated by intervening public highway, street, or road, unless directly involved by the permit application." The sentence that was and is located in subsection (e) of §116.133 was revised to replace the word "thoroughfare" when it was relocated into the §39.604 was adopted. Section 116.133 is SIP-approved; see 67 *Federal Register* 58709, (September 18, 2002) and 60 *Federal Register* 49781 (September 27, 1995). The relocated sentence incorporates and compliments this clarification and ensures that the property that is the subject of the application has proper signage.

In addition, TCEQ disagrees that the sign posting rule was further relaxed by the omission of the SIP-approved §116.133(f)(1). The requirement to post signs in an alternate language, even if alternate language newspaper notice publication is waived, remains in the rule at §39.604(e). However, it appears that the version of the rule submitted to EPA in 1999 contained an incorrect cross-reference (§39.703(d)(5)); this was corrected in a subsequent rulemaking that was not concurrently submitted as a revision to the SIP.

The sign posting rule is a procedural rule that has no counterpart in federal rules. The commission's adoption of this additional procedural requirement as revised will not interfere with the requirement for the commission to attain and maintain the national ambient air quality standards. Therefore, the commission disagrees that these changes constitute a relaxation of the SIP.

Section 39.605, Notice to Affected Agencies

The commission proposes to add paragraph (1)(D) that would require applicants for a PSD or

nonattainment permit under Chapter 116, Subchapter B, filed on or after July 1, 2010, to notify the chief executives of the city and county where the source would be located, and any Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification. This is in response to EPA comment in the Public Participation Notice that for a new or modified source subject to PSD, the rules do not require a copy of the public notice of a PSD or nonattainment permit to be sent to state and local air pollution control agencies, the chief executives of the city and county where the source would be located and any State or Federal Land Manager or Indian Governing Body whose lands may be affected by emissions from the source or modification, as required by 40 CFR §51.166(q)(2)(iv). The commission is addressing this comment by proposing §39.605(1)(D). Because nearby state and local pollution control agencies are already included in rule in subparagraphs (B) and (C), they were not added as part of this rulemaking.

Section 39.651, Application for Injection Well Permit

The commission proposes to amend §39.651(c)(2) to update the cross-reference to §39.411(b)(1) - (9) and (12) as §39.411(b)(1) - (9) and (11).

Section 39.653, Application for Production Area Authorization

The commission proposes to amend §39.653(b) to update the cross-reference to §39.411(b)(1) - (9) and (12) as §39.411(b)(1) - (9) and (11).

Section 39.709, Notice of Contested Case Hearing on Application

The commission proposes to amend §39.709(c) to update the cross-reference to §39.411(b)(13) and (d) as §39.411(b)(12) and (d).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of the proposed rules. The agency will use currently available resources to implement the proposed rules. State agencies or local governments required to publish notice for minor sources of air emissions as a result of the administration or enforcement of the proposed rules will see an increase, although not anticipated to be significant, in costs associated with placement of notice in newspapers.

The proposed rules respond to concerns expressed by the EPA in its review of the proposed SIP regarding current notice and public meeting requirements found in Chapter 39. In its Public Participation Notice, EPA requested the agency provide for additional notice and opportunity for public participation regarding certain air permits. The proposed rules expand the scope of which applications are subject to NAPD. Specifically, the proposed rules will require NAPDs for all applications for minor sources of air emissions. In addition, the rules limits the time period for requesting a contested case hearing for minor sources.

The agency is ensuring that all persons to whom notice must be given are specifically listed in the rules, and therefore, the proposed rules will also require the mailing of notice of PSD or nonattainment draft permits to Federal Land Managers or Indian Governing Bodies whose lands could be affected by emissions from a source or a modification of a source. Because EPA expressed concern about portions of rules applying to media other than air, or including rules that cite cross references that are not submitted as SIP revisions, the rules are revised to segregate certain requirements for air quality permits where

necessary for SIP approval.

Concurrently with this proposal, the commission is proposing amendments to rules in Chapter 55 to provide an opportunity to request a public meeting for PSD, nonattainment and hazardous air permit applications to address additional EPA concerns, and changes to Chapter 116 to address public notice for plant-wide applicability limit permits. The fiscal impacts of amendments to Chapters 55 and 116 are covered in a separate fiscal note.

State agencies and local governments that own or operate minor sources of air emissions, such as engines, hospitals, labs, incinerators, research centers, landfills, and air curtain incinerators will be required to publish the NAPD as a result of the proposed rules. Publication costs for these governmental entities could increase, although the increase is not expected to be significant. Publication costs include publication of the NAPD in an English language newspaper and possibly an alternate language newspaper. Publication costs are estimated to range from $100 per notice to $4,000 per notice depending on the newspaper. Costs of preparing public notice are not expected to be significant since the agency provides templates in English and Spanish. If an alternate language other than Spanish is required, costs are still expected to be minimal since governmental entities are required to provide a NORI in all required languages and could probably use most of that language for the NAPD.

Based on the number of first notices in the past year that did not have to publish NAPD, staff estimates that there could be as many as 415 NAPDs per year statewide required by the proposed rules. Estimates of minor source activity indicate that as much as 5% of minor sources (21) could be from governmental entities, 65% (270) could be from large businesses, and 30% (124) could be from small businesses.

Publication costs for governmental entities statewide could range from $2,100 to $84,000 per year.

The proposed amendments to Chapter 39 also include updates to cross-references. Because they are administrative in nature, they are not expected to have a fiscal impact on other state agencies or local governments.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be more public awareness because of notice regarding draft permits for applications from minor sources as well as consistency with federal notice requirements.

Based on the number of first notices in the past year that did not have to publish NAPD, staff estimates that there could be as many as 415 NAPDs per year statewide required by the proposed rules. Estimates of minor source activity indicate that as much as 5% of minor sources (21) could be from governmental entities, 65% (270) could be from large businesses, and 30% (124) could be from small businesses. Examples of businesses that could be affected by the proposed rules are rock crushers, concrete batch plants, agricultural enterprises, surface coating operations, bulk fuel terminals, and tank truck/rail car cleaning facilities. The proposed rules are not expected to have a fiscal impact on individuals since they do not typically participate in activities that require compliance with the public notice rules.

Publication costs for large businesses could increase, although the increase is not expected to be significant. Publication costs include publication of the NAPD in an English language newspaper and

possibly an alternate language newspaper. Publication costs are estimated to range from $100 per notice to $4,000 per notice depending on the newspaper. Costs of preparing public notice are not expected to be significant since the agency provides templates in English and Spanish. If an alternate language other than Spanish is required, costs are still expected to be minimal since large businesses are required to provide a NORI in all required languages and could probably use most of that language for the NAPD. Statewide, publication costs for large businesses could range from $27,000 to $1,080,000 per year as a result of the proposed rules.

The proposed amendments to Chapter 39 also include updates to cross-references. Because they are administrative in nature, they are not expected to have a fiscal impact on other state agencies or local governments.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications, although not significant, are anticipated for small or micro-businesses as a result of the proposed rules. Small businesses can expect to incur the same costs for publication of notice as those incurred by a large business. However, if the small business meets the requirements for a small business stationary source as defined in the rules, it can be exempt from publication of the display notice in the newspaper, resulting in lower costs of publication. Staff estimates that there may be as many as 124 small businesses per year that will incur increases in publication costs to provide NAPDs. Publication costs are estimated to range from $100 per notice to $4,000 per notice depending on the newspaper. Costs of preparing public notice are not expected to be significant since the agency provides templates in English and Spanish. If an alternate language other than Spanish is required, costs are still expected to be minimal since small businesses are required to provide a NORI in all required languages and could

probably use most of that language for the NAPD. Statewide, publication costs for small businesses could range from $12,400 to $496,000 per year as a result of the proposed rules.

The proposed amendments to Chapter 39 also include updates to cross-references. Because they are administrative in nature, they are not expected to have a fiscal impact on other state agencies or local governments.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to comply with federal regulations.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the

economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 39 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants, instead they amend the notice requirements for applications for air quality permits, which are procedural in nature. The primary purpose of the proposed rulemaking is to correct deficiencies in the public notice requirements of the rules as identified by the EPA in the Public Participation Notice. Correction of these deficiencies is necessary to ensure that the rules can be a federally approved part of the Texas SIP.

The first proposed change is the expansion of the scope of applications that are subject to Notice of Preliminary Decision to all applications for minor NSR applications, except for renewals of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. This will include applications for PALs and flexible permits. In addition, the commission is ensuring that all persons to whom notice must be given, and specific notice content, are specifically set forth in the rules, and the list has been expanded to include the chief executives of the city and county where the source would be located, and any Federal Land Manager or Indian Governing Body whose lands may be affected by emissions from the source or modification. Because EPA expressed concern about portions of previously submitted rules applying to media other than air, or including rules that cite cross references that are not submitted as SIP revisions, the rules are revised to segregate certain requirements for air quality permits where necessary for SIP approval. The proposed rulemaking will also require applicants for PSD and nonattainment air quality permits to make available for public comment the executive director's air quality analysis of the permit. Finally, the proposed rulemaking will remove obsolete references from the rules for VERPs, FGUs, and MPPs for

which applications were filed before September 1, 2001. Although the expansion of publication requirements may place additional financial requirements on the regulated community, the rulemaking action does not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the proposed amendments to Chapter 39 were developed to correct deficiencies in the public notice requirements for air quality permit applications identified by EPA in the Public Participation Notice. This proposed rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the FCAA, and authorized under THSC, §§382.002, 382.011, 382.012, 382.017, 382.020, 382.051, 382.0518, 382.056, 382.055, 382.05101, 382.0291, 382.040, 382.0512, 382.0515, 382.0516, 382.057, 382.05186, 382.05192, 382.05194, 382.05195, 382.05199, and 382.058; Texas Government Code, §§2001.004, 2001.006, and 2001.142; FCAA, 42 United States Code (USC), §§7401 *et seq*., as well as TWC, §§5.102, 5.103 and 5.105, TWC, Chapter 26; the Injection Well Act, TWC, Chapter 27; the Solid Waste Disposal Act, THSC, Chapter 36;, and the Texas Radiation Control Act, THSC, Chapter 401.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments to Chapter 39 amend the procedural requirements for applications for air quality permits. The primary purpose of the proposed rulemaking is to correct deficiencies in the public notice requirements of the rules as identified by the EPA in the Public Participation Notice. Correction of these deficiencies is necessary to ensure that the rules can be a federally approved part of the Texas SIP. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed rules do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Although the proposed rules do not directly prevent a nuisance or prevent an immediate threat to life or property, they do partially fulfill a federal mandate under 42 USC, §7410. Consequently, the exemption that applies to these proposed rules is that of an action reasonably taken to fulfill an obligation mandated by federal law. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as

amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed rules update procedural rules that govern the submittal of air quality permit applications. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The proposed rules will not require any changes to outstanding federal operating permits.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on January 25, 2010, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Duron, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2010-004-039-LS. The comment period closes on February 16, 2010. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Janis Hudson, Environmental Law Division, (512) 239-0466 or Margaret Ligarde, Environmental Law Division, (512) 239-3426.

SUBCHAPTER B: PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

§39.106

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and Texas Health and Safety Code (THSC), §361.024, concerning Rules and Standards, which authorizes the commission to adopt rules concerning the management and control of solid waste. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency.

The amendment implements TWC, §§5.102, 5.103, 5.105, and the Solid Waste Disposal Act, THSC, Chapter 361, and Texas Government Code, §§2001.004, 2001.006, and 2001.142.

§39.106. Application for Modification of a Municipal Solid Waste Permit or Registration.

(a) When mailed notice is required under §305.70 of this title (relating to Municipal Solid Waste

Permit and Registration Modifications), the mailed notice shall be mailed by the permit or registration holder and the text of the notice shall comply with §39.411(b)(1) - (3), (6), (7), (9), and (11) [§39.411(b)(1) - (3), (6), (7), (9), and (12)] of this title (relating to Text of Public Notice), and shall provide the location and phone number of the appropriate regional office of the commission to be contacted for information on the location where a copy of the application is available for review and copying.

(b) When mailed notice is required by §305.70 of this title [(relating to Municipal Solid Waste Permit and Registration Modifications)], notice shall be mailed by the permit or registration holder to the persons listed in §39.413 of this title (relating to Mailed Notice).

(c) The effective date of the amendment of existing §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste[,] or Hazardous Waste[, or Municipal Solid Waste] Permit) and this new §39.106 is June 3, 2002. Applications for modifications filed before amended §39.105 of this title and this new §39.106 become effective, will be subject to §39.105 of this title as it existed prior to June 3, 2002.

SUBCHAPTER H: APPLICABILITY AND GENERAL PROVISIONS

[§39.402, §39.404]

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeals are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The repeals are also proposed under THSC, §382.020, concerning control of emissions from facilities that handle certain agricultural products, THSC, §382.051, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0518, which authorizes the commission to issue preconstruction permits; THSC, §382.056, which requires an applicant for a permit issued under §382.0518 to publish notice of intent to obtain a permit; THSC, §382.055, which establishes the commission's authority to review and renew preconstruction permits. The repeals are also proposed under THSC, §382.05101, concerning De Minimis

Air Contaminants; THSC, §382.0291, concerning Public Hearing Procedures; THSC, §382.040, concerning Documents; Public Property; THSC, §382.0512, concerning Modification of Existing Facility; THSC, §382.0515, concerning Application for Permit; THSC, §382.0516, concerning Notice to State Senator, State Representative, and Certain Local Officials; THSC, §382.057, concerning Exemption; THSC, §382.05186, concerning Pipeline Facilities Permits; THSC, §382.05192, concerning Review and Renewal of Emissions Reduction and Multiple Plant Permits; THSC, §382.05194, concerning Multiple Plant Permit; and THSC, §382.05195, concerning Standard Permit; THSC, §382.05199, concerning Standard Permit for Certain Concrete Batch Plants: Notice and Hearing; THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant under Permit by Rule, Standard Permit, or Exemption. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The repeals are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq*., which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The repeals implement THSC, §§382.002, 382.011, 382.012, 382.017, 382.020, 382.051, 382.0518, 382.056, 382.055, 382.05101, 382.0291, 382.040, 382.0512, 382.0515, 382.0516, 382.057, 382.05186, 382.05192, 382.05194, 382.05195, 382.05199, and 382.058; Texas Government Code, §§2001.004, 2001.006, and 2001.142; and FCAA, 42 USC, §§7401 *et seq*.

[§39.402. Applicability to Air Quality Permit Amendments.]

[(a) Air quality permit amendment applications under §116.116(b) of this title (relating to Changes to Facilities) or amendment applications to flexible permits under §116.710(a)(2) and (3) of this title (relating to Applicability) must comply with this subchapter and Subchapter K of this chapter regarding notices when the amendment involves:]

[(1) a change in character of emissions or release of an air contaminant not previously authorized under the permit;]

[(2) a facility affected by TCAA, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds significant levels for public notice by being greater than any of the following levels:]

[(A) 250 tons per year (tpy) of carbon monoxide (CO) or nitrogen oxides (NO_X);]

[(B) 25 tpy of volatile organic compounds (VOC), sulfur dioxide (SO2), particulate matter (PM), or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;]

[(C) a new major stationary source or major modification threshold as defined in §116.12 of this title (relating to Nonattainment Review Definitions); or]

[(D) a new major stationary source or major modification threshold, as defined in 40 Code of Federal Regulations (CFR), §52.21, under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration); or]

[(3) a facility not affected by TCAA, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds public notice de minimis levels by being greater than any of the following levels:]

[(A) 50 tpy of CO;]

[B) ten tpy of SO2;]

[(C) 0.6 tpy of lead; or]

[(D) five tpy of NO_X, VOC, PM, or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen; or]

[(4) any amendment when the executive director determines that:]

[(A) there is a reasonable likelihood for emissions to impact a nearby sensitive receptor;]

[(B) there is a reasonable likelihood of high nuisance potential from the operation of the facilities;]

[(C) the application involves a facility or site for which the compliance history contains violations which are unresolved or constitute a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process; or]

[(D) there is a reasonable likelihood of significant public interest in a proposed activity.]

[(b) Except as provided in subsection (a) of this section, air quality permit amendment applications are not required to comply with this subchapter and Subchapter K of this chapter.]

[§39.404. Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities and for Applications for Permits for Specific Designated Facilities.]

[(a) Initial applications for air quality permits for grandfathered facilities.]

[(1) With the exception of §39.403(a)(1) of this title (relating to Applicability), Subchapters H - M of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Air Quality Applications; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses) also apply to:]

[(A) applications for permits for electric generating facilities under Texas Health and Safety Code, §382.05185(c) and (d);]

[(B) applications for existing facilities permits under Texas Health and Safety Code, §382.05183; and]

[(C) applications for pipeline facility permits under Texas Health and Safety Code, §382.05186.]

[(2) Applications for initial issuance of permits under Texas Health and Safety Code, §§382.05183, 382.05185(c) and (d), and 382.05186 are subject only to §§39.401, 39.405, 39.407, 39.409, 39.411, 39.418, 39.420, and 39.601 - 39.606 of this title (relating to Purpose; General Notice Provisions; Mailing Lists; Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing; Text of Public Notice; Notice of Receipt of Application and Intent to Obtain Permit; Transmittal of the Executive Director's Response to Comments and Decision; Applicability; Mailed Notice; Newspaper Notice; Sign-Posting; Notice to Affected Agencies; and Alternative Means of Notice for Permits for Grandfathered Facilities), except that any reference to requests for reconsideration or contested case hearings in §39.409 or §39.411 of this title shall not apply.]

[(b) Applications for permits for specific designated facilities.]

[(1) With the exception of §39.403(a)(1) of this title, Subchapters H - M of this chapter

also apply to applications for permits under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities).]

[(2) Applications for permits under Chapter 116, Subchapter L of this title submitted on or before January 1, 2018, are subject only to §§39.401, 39.405, 39.407, 39.409, 39.411, 39.418, 39.420, and 39.601 - 39.605 of this title, except that any reference to contested case hearings shall not apply.]

SUBCHAPTER H: APPLICABILITY AND GENERAL PROVISIONS

§§39.402, 39.403, 39.405, 39.409, 39.411, 39.418 - 39.420

STATUTORY AUTHORITY

The new section and amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new section and amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The new section and amendments are also proposed under THSC, §382.020, concerning control of emissions from facilities that handle certain agricultural products, THSC, §382.051, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0518, which authorizes the commission to issue preconstruction permits; THSC, §382.056, which requires an applicant for a permit issued under §382.0518 to publish notice of intent to obtain a permit; THSC, §382.055, which

establishes the commission's authority to review and renew preconstruction permits. The new section and amendments are also proposed under THSC, §382.05101, concerning De Minimis Air Contaminants; THSC, §382.0291, concerning Public Hearing Procedures; THSC, §382.040, concerning Documents; Public Property; THSC, §382.0512, concerning Modification of Existing Facility; THSC, §382.0515, concerning Application for Permit; THSC, §382.0516, concerning Notice to State Senator, State Representative, and Certain Local Officials; THSC, §382.057, concerning Exemption; THSC, §382.05186, concerning Pipeline Facilities Permits; THSC, §382.05192, concerning Review and Renewal of Emissions Reduction and Multiple Plant Permits; THSC, §382.05194, concerning Multiple Plant Permit; and THSC, §382.05195, concerning Standard Permit; THSC, §382.05199, concerning Standard Permit for Certain Concrete Batch Plants: Notice and Hearing; THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant under Permit by Rule, Standard Permit, or Exemption. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The new section and amendments are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The new section and amendments implement THSC, §§382.002, 382.011, 382.012, 382.017, 382.020, 382.051, 382.0518, 382.056, 382.055, 382.05101, 382.0291, 382.040, 382.0512, 382.0515, 382.0516,

382.057, 382.05186, 382.05192, 382.05194, 382.05195, 382.05199, and 382.058; Texas Government Code, §§2001.004, 2001.006, and 2001.142; and FCAA, 42 USC, §§7401 *et seq*.

§39.402. Applicability to Air Quality Permits and Amendments.

(a) As specified in those subchapters, Subchapter H and K of this chapter (relating to Applicability and General Provisions; and Public Notice of Air Quality Permit Applications, respectively) apply to notices for:

(1) applications for air quality permits and air quality permit amendments under Texas Health and Safety Code (THSC), §382.0518, including applications for initial issuance of flexible permits under Chapter 116, Subchapter G of this title (relating to Flexible Permits), when an action involves:

(A) construction of any new facility as defined in §116.10 of this title (relating to General Definitions); and

(B) modification of an existing facility as defined in §116.10 of this title, including modification of pipeline facilities permits;

(2) applications for air quality permit amendments under §116.116(b) of this title (relating to Changes to Facilities) and applications for amendments to flexible permits under Chapter 116, Subchapter G of this title when the amendment involves:

(A) construction of any new facility as defined in §116.10 of this title;

(B) modification of an existing facility as defined in §116.10 of this title, including modification of pipeline facilities permits;

(C) a change in character of emissions or release of an air contaminant not previously authorized under the permit;

(D) a facility not affected by THSC, §382.020, where the total emissions increase from all facilities to be authorized under the amended permit exceeds public notice *de minimis* levels by being greater than any of the following levels:

(i) 50 tpy of carbon monoxide (CO);

(ii) ten tpy of sulfur dioxide (SO_2);

(iii) 0.6 tons per year (tpy) of lead; or

(iv) five tpy of nitrogen oxides (NO_X), volatile organic compounds (VOC), particulate matter (PM), or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(E) a facility affected by THSC, §382.020, where the total emissions increase

from all facilities to be authorized under the amended permit exceeds significant levels for public notice by being greater than any of the following levels:

(i) 250 tpy of CO or NO_X;

(ii) 25 tpy of VOC, SO_2, PM, or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(iii) a new major stationary source or major modification threshold as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions); or

(iv) a new major stationary source or major modification threshold, as defined in 40 Code of Federal Regulations (CFR), §52.21, under the new source review requirements of the Federal Clean Air Act (FCAA), Part C (Prevention of Significant Deterioration); or

(F) other amendments when the executive director determines that:

(i) there is a reasonable likelihood for emissions to impact a nearby sensitive receptor;

(ii) there is a reasonable likelihood of high nuisance potential from the operation of the facilities;

(iii) the application involves a facility in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History); or

(iv) there is a reasonable likelihood of significant public interest in a proposed activity;

(3) renewal of air quality permits under THSC, §382.055;

(4) applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction;

(5) applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(6) applications for multiple plant permits (MPPs) under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits);

(7) applications for permits, registrations, licenses, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title

(relating to Definitions), submitted on or before January 1, 2018, are subject to the public notice requirements of Chapter 91 of this title (relating to Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities) in addition to the requirements of this chapter, unless otherwise specified in Chapter 91 of this title.

(8) concrete batch plants without enhanced controls authorized by an air quality standard permit adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits), unless the plant is to be temporarily located in or contiguous to the right-of-way of a public works project; and

(9) change of location of a portable facility.

(b) Unless otherwise stated in this chapter, applications for air quality permits and permit amendments filed before July 1, 2010 are governed by the rules in Subchapters H and K of this chapter as they existed immediately before July 1, 2010, and those rules are continued in effect for that purpose.

(c) Notwithstanding subsections (a) or (b) of this section, Subchapters H and K of this chapter do not apply to the following applications where notice or opportunity for contested case hearings is not otherwise required by law:

(1) applications under Chapter 122 of this title (relating to Federal Operating Permits Program);

(2) applications under Chapter 116, Subchapter F of this title, except applications for concrete batch plants authorized by standard permit as referenced in subsection (a)(8) of this section.

(3) registrations under Chapter 106 of this title (relating to Permits by Rule).

§39.403. Applicability.

(a) Permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapters H - J, L, and M of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; [Public Notice of Air Quality Applications;] Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses). Permit applications that are declared administratively complete before September 1, 1999 are subject to Subchapters A - E of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications; Public Notice of Air Quality Applications; and Public Notice of Other Specific Applications). All consolidated permit applications are subject to Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits). The effective date of the amendment of existing §39.403, specifically with respect to subsection (c)(6) and (7) [(c)(9) and (10)] of this section, is June 3, 2002. Applications for modifications filed before this amended section becomes effective will be subject to this section as it existed prior to June 3, 2002.

(1) Explanation of applicability. Subsection (b) of this section lists all the types of

applications to which Subchapters H - J and L and M of this chapter apply. Subsection (c) of this section lists certain types of applications that would be included in the applications listed in subsection (b) of this section, but that are specifically excluded. Subsection [Subsections] (d) [and (e)] of this section specifies [specify] that only certain sections apply to applications for radioactive materials licenses [or voluntary emission reduction permits].

(2) Explanation of organization. Subchapter H of this chapter contains general provisions that may apply to all applications under Subchapters H - M of this chapter. Additionally, in Subchapters I - M of this chapter, there is a specific subchapter for each type of application. Those subchapters contain additional requirements for each type of application, as well as indicating which parts of Subchapter H of this chapter must be followed.

(3) Types of applications. Unless otherwise provided in Subchapters G - M of this chapter, public notice requirements apply to applications for new permits[, concrete batch plant air quality exemptions from permitting or permits by rule,] and applications to amend, modify, or renew permits.

(b) As specified in those subchapters, Subchapters H - J, L, and M of this chapter apply to notices for:

(1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under Texas Health and Safety Code (THSC), Chapter 361;

(2) applications for wastewater discharge permits under Texas Water Code (TWC),

Chapter 26, including:

(A) applications for the disposal of sewage sludge or water treatment sludge under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation); and

(B) applications for individual permits under Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations);

(3) applications for underground injection well permits under TWC, Chapter 27, or under THSC, Chapter 361;

(4) applications for production area authorizations or exempted aquifers under Chapter 331 of this title (relating to Underground Injection Control);

(5) contested case hearings for permit applications or contested enforcement case hearings under Chapter 80 of this title (relating to Contested Case Hearings);

(6) applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), except as provided in subsection (d) [(e)] of this section;

(7) applications for consolidated permit processing and consolidated permits processed under TWC, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing); and

[(8) applications for air quality permits under THSC, §382.0518 and §382.055. In addition, applications for permit amendments under §116.116(b) of this title (relating to Changes to Facilities), initial issuance of flexible permits under Chapter 116, Subchapter G of this title (relating to Flexible Permits), amendments to flexible permits under §116.710(a)(2) and (3) of this title (relating to Applicability) when an action involves:]

[(A) construction of any new facility as defined in §116.10 of this title (relating to General Definitions);]

[(B) modification of an existing facility as defined in §116.10 of this title which result in an increase in allowable emissions of any air contaminant emitted equal to or greater than the emission quantities defined in §106.4(a)(1) of this title (relating to Requirements for Permitting by Rule) and of sources defined in §106.4(a)(2) and (3) of this title; or]

[(C) other changes when the executive director determines that:]

[(i) there is a reasonable likelihood for emissions to impact a nearby sensitive receptor;]

[(ii) there is a reasonable likelihood of high nuisance potential from the operation of the facilities;]

[(iii) the application involves a facility or site for which the compliance history contains violations which are unresolved or constitute a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process; or]

[(iv) there is a reasonable likelihood of significant public interest in a proposed activity;]

[(9) applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction;]

[(10) concrete batch plants registered under Chapter 106 of this title (relating to Permits by Rule) unless the facility is to be temporarily located in or contiguous to the right-of-way of a public works project;]

[(11) applications for voluntary emission reduction permits under THSC, §382.0519;]

[(12) applications for permits for electric generating facilities under Texas Utilities Code, §39.264;]

[(13) applications for multiple plant permits (MPPs) under THSC, §382.05194; and]

(8) [(14)] Water Quality Management Plan updates processed under TWC, Chapter 26,

Subchapter B.

(c) Notwithstanding subsection (b) of this section, Subchapters H - M of this chapter do not apply to the following actions and other applications where notice or opportunity for contested case hearings are otherwise not required by law:

(1) applications for authorizations under Chapter 321 of this title (relating to Control of Certain Activities by Rule), except for applications for individual permits under Subchapter B of that chapter;

(2) applications for registrations and notifications under Chapter 312 of this title;

(3) applications under Chapter 332 of this title (relating to Composting);

[(4) applications under Chapter 122 of this title (relating to Federal Operating Permits Program);]

[(5) applications under Chapter 116, Subchapter F of this title (relating to Standard Permits);]

[(6) applications under Chapter 106 of this title except for concrete batch plants specified in subsection (b)(10) of this section;]

(4) [(7)] applications under §39.15 of this title (relating to Public Notice Not Required for Certain Types of Applications) without regard to the date of administrative completeness;

(5) [(8)] applications for minor amendments under §305.62(c)(2) of this title (relating to Amendments [Amendment]). Notice for minor amendments shall comply with the requirements of §39.17 of this title (relating to Notice of Minor Amendment) without regard to the date of administrative completeness;

(6) [(9)] applications for Class 1 modifications of industrial or hazardous waste permits under §305.69(b) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). Notice for Class 1 modifications shall comply with the requirements of §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit), without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 of this title (relating to Text of Public Notice) and §305.69(b) of this title;

(7) [(10)] applications for modifications of municipal solid waste permits and registrations under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications). Notice for modifications shall comply with the requirements of §39.106 of this title (relating to Application for Modification of a Municipal Solid Waste Permit or Registration), without regard to the date of administrative completeness;

(8) [(11)] applications for Class 2 modifications of industrial or hazardous waste permits under §305.69(c) of this title. Notice for Class 2 modifications shall comply with the requirements of

§39.107 of this title (relating to Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit), without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 and §305.69(c) of this title;

(9) [(12)] applications for minor modifications of underground injection control permits under §305.72 of this title (relating to Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee);

(10) [(13)] applications for minor modifications of Texas Pollutant Discharge Elimination System permits under §305.62(c)(3) of this title;

(11) [(14)] applications for registration and notification of sludge disposal under §312.13 of this title (relating to Actions and Notice); or

(12) [(15)] applications for registration of pre-injection units for nonhazardous, noncommercial, underground injection wells under §331.17 of this title (relating to Pre-injection [Pre-Injection] Units Registration).

[(d) Applications for initial issuance of voluntary emission reduction permits under THSC, §382.0519 and initial issuance of electric generating facility permits under Texas Utilities Code, §39.264 are subject only to §39.405 of this title (relating to General Notice Provisions), §39.409 of this title (relating to Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing), §39.411 of this title, §39.418 of this title (relating to Notice of Receipt of Application and Intent

to Obtain Permit), §39.602 of this title (relating to Mailed Notice), §39.603 of this title (relating to Newspaper Notice), §39.604 of this title (relating to Sign-Posting), §39.605 of this title (relating to Notice to Affected Agencies), and §39.606 of this title (relating to Alternative Means of Notice for Permits for Grandfathered Facilities), except that any reference to requests for reconsideration or contested case hearings in §39.409 or §39.411 of this title shall not apply. For MPP applications filed before September 1, 2001, the initial issuance, amendment, or revocation of MPPs under THSC, §382.05194 is subject to the same public notice requirements that apply to initial issuance of voluntary emission reduction permits and initial issuance of electric generating facility permits, except as otherwise provided in §116.1040 of this title (relating to Multiple Plant Permit Public Notice and Public Participation).]

(d) [(e)] Applications for radioactive materials licenses under Chapter 336 of this title are not subject to §39.405(c) and (e) of this title (relating to General Notice Provisions); §§39.418 - 39.420 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; Notice of Application and Preliminary Decision; and Transmittal of the Executive Director's Response to Comments and Decision); and certain portions of §39.413 of this title (relating to Mailed Notice).

[(f) Applications for permits, registrations, licenses, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), submitted on or before January 1, 2018, are subject to the public notice requirements of Chapter 91 of this title (relating to Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities) in addition to the requirements of this chapter, unless otherwise specified in Chapter 91 of this title.]

§39.405. General Notice Provisions.

(a) Failure to publish notice. If the chief clerk prepares a newspaper notice that is required by Subchapters G - J, L, and M of this chapter (relating to Public Notice for Applications for Consolidated Permits, Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, [Public Notice of Air Quality Applications,] Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses) and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or for Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, or fails to submit the copies of notices or affidavit required in subsection (e) of this section, the executive director may cause one of the following actions to occur.

(1) The chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication.

(2) The executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it will be exempt from any application fee requirements.

(b) Electronic mailing lists. The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) Mail or hand delivery. When Subchapters G - L of this chapter require notice by mail, notice by hand delivery may be substituted. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.

(d) Combined notice. Notice may be combined to satisfy more than one applicable section of this chapter.

(e) Notice and affidavit. When Subchapters G - J and L of this chapter require an applicant to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of the published notice which shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When the chief clerk publishes notice under subsection (a) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

(f) Published notice. When this chapter requires notice to be published under this subsection:

(1) the applicant shall publish notice in the newspaper of largest circulation in the county in which the facility is located or proposed to be located or, if the facility is located or proposed to be

located in a municipality, the applicant shall publish notice in any newspaper of general circulation in the municipality;[. For air applications subject to §39.603 of this title (relating to Newspaper Notice), applicants shall instead publish notice as required by that rule; and]

(2) for applications for solid waste permits and injection well permits, the applicant shall publish notice in the newspaper of largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in any newspaper of general circulation in the county in which the facility is located or proposed to be located. The requirements of this subsection may be satisfied by one publication if the newspaper is both published in the county and is the newspaper of largest general circulation in the county; and

(3) air quality permit applications required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit Applications, respectively) to publish notice shall comply with the requirements of §39.603 of this title (relating to Newspaper Notice).

(g) Copy of application. The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. If the application is submitted with confidential information marked as confidential by the applicant, the applicant shall indicate in the public file that there is additional information in a confidential file. The copy of the application must comply with the following.

(1) A copy of the administratively complete application must be available for review and copying beginning on the first day of newspaper publication of Notice of Receipt of Application and Intent to Obtain Permit and remain available for the publications' designated comment period.

(2) A copy of the complete application (including any subsequent revisions to the application) and executive director's preliminary decision must be available for review and copying beginning on the first day of newspaper publication required by this section and remain available until the commission has taken action on the application or the commission refers issues to State Office of Administrative Hearings; and [.]

(3) where applicable, for air quality permit applications filed on or after July 1, 2010, the applicant shall also provide a copy of the executive director's air quality analysis for review and copying beginning on the first day of newspaper publication required by this section and remain available until the commission has taken action on the application or the commission refers issues to State Office of Administrative Hearings.

(h) Alternative language newspaper notice.

(1) Applicability. The following are subject to this subsection:

(A) Air quality permit applications [or registrations] that are declared administratively complete by the executive director on or after September 1, 1999, are subject to this subsection; and[.]

(B) Permit applications other than air quality permit applications [or registrations] that are required to comply with §39.418 or §39.419 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; and Notice of Application and Preliminary Decision) that are filed on or after November 30, 2005 [the effective date of this subsection] are subject to the requirements of this subsection.

(2) This subsection applies whenever notice is required to be published under §39.418 or §39.419 of this title [(relating to Notice of Receipt of Application and Intent to Obtain Permit; and Notice of Application and Preliminary Decision)], and either the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program as required by Texas Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a) (relating to Required Bilingual Education and English as a Second Language Programs) and one of the following conditions is met:

(A) students are enrolled in a program at that school;

(B) students from that school attend a bilingual education program at another location; or

(C) the school that otherwise would be required to provide a bilingual education program has been granted an exception form the requirements to provide the program as provided for in 19 TAC §89.1207(a) (relating to Exceptions and Waivers) [waives out of this requirement under 19 TAC §89.1205(g)].

(3) Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(e), and are not otherwise affected by 19 TAC §89.1205(a), will not trigger the requirements of this subsection.

(4) The notice must be published in a newspaper or publication that is published primarily in the alternative languages in which the bilingual education program is or would have been taught, and the notice must be in those languages.

(5) The newspaper or publication must be of general circulation in the county in which the facility is located or proposed to be located. If the facility is located or proposed to be located in a municipality, and there exists a newspaper or publication of general circulation in the municipality, the applicant shall publish notice only in the newspaper or publication in the municipality. This paragraph does not apply to notice required to be published for air quality permits under §39.603 of this title.

(6) For notice required to be published in a newspaper or publication under §39.603 of this title, relating to air quality permits, the newspaper or publication must be of general circulation in the municipality or county in which the facility is located or is proposed to be located, and the notice must be published as follows.

(A) One notice must be published in the public notice section of the newspaper and must comply with the applicable portions of §39.411 of this title (relating to Text of Public Notice).

(B) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

(i) permit application number;

(ii) company name;

(iii) type of facility;

(iv) description of the location of the facility; and

(v) a note that additional information is in the public notice section of the same issue.

(7) Waste and water quality alternative language must be published in the public notice section of the alternative language newspaper and must comply with §39.411 of this title [(relating to Text of Public Notice)].

(8) The requirements of this subsection are waived for each language in which no publication exists, or if the publishers of all alternative language publications refuse to publish the notice. If the alternative language publication is published less frequently than once a month, this notice

requirement may be waived by the executive director on a case-by-case basis.

(9) Notice under this subsection will only be required to be published within the United States.

(10) Each alternative language publication must follow the requirements of this chapter that are consistent with this subsection.

(11) If a waiver is received under this subsection on an air quality permit application, the applicant shall complete a verification and submit it as required under §39.605(3) of this title (relating to Notice to Affected Agencies). If a waiver is received under this subsection on a waste or water quality application, the applicant shall complete a verification and submit it to the chief clerk and the executive director.

(i) Failure to publish notice of air quality permit applications. If the chief clerk prepares a newspaper notice that is required by Subchapters H and K of this chapter (relating to Applicability and General Provisions, and Public Notice of Air Quality Permit Applications) for air quality permit applications and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or, for Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, or fails to submit the copies of notices or affidavit required in subsection (e) of this section, the executive director may cause one of the following actions to occur.

(1) The chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication.

(2) The executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it will be exempt from any application fee requirements.

(j) Notice and affidavit for air quality permit applications. When Subchapters H and K of this chapter require an applicant for an air quality permit action to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of the published notice which shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When the chief clerk publishes notice under subsection (i) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

§39.407. Mailing Lists. {NOTE: No change to TAC, but submitting as a revision to the SIP}

The chief clerk shall maintain mailing lists of persons requesting notice of an application. Persons, including participants in past agency permit proceedings, may request in writing to be on a mailing list. The chief clerk may from time to time request confirmation that persons on a list wish to

remain on the list, and may delete from the list the name of any person who fails to respond to such request.

§39.409. Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing.

Notice given under this chapter will specify any applicable deadline to file public comment specified under §55.152 of this title (relating to Public Comment Period) and, if applicable, any deadlines to file requests for reconsideration, contested case hearing, or notice and comment hearing. After the deadline, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications and Other Authorizations).

§39.411. Text of Public Notice.

(a) Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice being given.

(b) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit Applications) for air quality permit applications, those applications are subject to subsections (e) - (h) of this section. When notice of receipt of application and intent to obtain permit by publication or by mail is required by Subchapters H - J and L of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water

Quality Applications and Water Quality Management Plans, [Public Notice of Air Quality Applications,] and Public Notice of Injection Well and Other Specific Applications), Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), or for Subchapter M of this chapter (relating to [Mailed Notice] for Radioactive Material Licenses), the text of the notice must include the following information:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commissions's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

[(10) for notices of air applications:]

[(A) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are regulated under national ambient air quality standards (NAAQS) or under state standards in Chapters 111, 112, 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);]

[(B) if notice is for applications described in §39.403(b)(11) or (12) of this title (relating to Applicability) or for applications submitted on or before January 1, 2018, under §39.404(b) of this title (relating to Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities and for Applications for Permits for Specific Designated Facilities), a statement that any person is entitled to request a notice and comment hearing from the commission. If notice is for any other air application, the following information must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:]

[(i) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission;]

[(ii) a statement that a contested case hearing request must include the requester's location relative to the proposed facility or activity;]

[(iii) a statement that a contested case hearing request should include a description of how the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity; and]

[(iv) that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted;]

[(C) notification that a person residing within 440 yards of a concrete batch plant under an exemption from permitting or permit by rule adopted by the commission is an affected person who is entitled to request a contested case hearing; and]

[(D) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Commission on Environmental Quality"; and]

(10) [(11)] for notices of municipal solid waste applications, a statement that a person who may be affected by the facility or proposed facility is entitled to request a contested case hearing from the commission. This statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(11) [(12)] any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program; or

(12) [(13)] for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted; and [.]

(13) [(14)] for Class 3 modifications of hazardous industrial solid waste permits, the statement "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(c) Unless mailed notice is otherwise provided for under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (11) [(12)] of this section;

(2) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted, or a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(3) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications and Other Authorizations), a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(5) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision are available for review and copying;

(6) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity; and

(7) for radioactive material licenses under Chapter 336 of this title, if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.

(d) When notice of a public meeting or notice of a hearing by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (3), (6) - (8), and (12) of this section;

(2) the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures; and

(3) for notices of public meetings only, a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(e) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter, the text of the notice must include the information in this subsection.

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to:

(i) all comments regarding applications for Prevention of Significant Deterioration and Nonattainment permits under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and Plant-wide Applicability Limit permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) filed on or after July 1, 2010;

(ii) all comments regarding applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction, filed on or after July 1, 2010; and

(iii) for all other air quality permit applications, comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to

the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. Where applicable, the notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located, or if, there is substantial public interest in the proposed activity when requested by any interested person for the following applications that are filed on or after July 1, 2010; or

(A) air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment in Chapter 116, Subchapter B of this title;

(B) applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit subject to Chapter 116 of this title; and

(C) applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are regulated under national ambient air quality standards (NAAQS) or under state standards in Chapters 111, 112, 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(11) If notice is for any air application except those listed in paragraph (12) of this subsection, the following information must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:

(A) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission within the following specified time periods;

(i) for permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title 30 days after the mailing of the executive director's response to comments; or

(ii) for air quality permit applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction, 30 days after the mailing of the executive director's response to comments;

(iii) for renewals of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History), a statement that a request for a contested case hearing must be received by the commission before the close of the 15-day comment period provided in response to the last publication of Notice of Application and Intent to Obtain Permit; or

(iv) for all air quality permit applications other than those in clauses (i) - (iii) of this subparagraph, a statement that a request for a contested case hearing must be received by the commission before the close of the 30-day comment period provided in response to the last publication of

Notice of Receipt of Application and Intent to Obtain Permit. If no hearing requests are received by the end of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, there is no further opportunity to request a contested case hearing. If hearing requests are received before the close of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, a request for a contested case hearing must be received by the commission no later than 30 days after the mailing of the executive director's response to comments;

(B) a statement that a request for a contested case hearing must be received by the commission;

(C) a statement that a contested case hearing request must include the requester's location relative to the proposed facility or activity;

(D) a statement that a contested case hearing request should include a description of how the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(E) that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted; and

(F) air quality applications described in subparagraph (A)(iv) of this paragraph, a

statement that when no hearing requests are timely received the applicant shall publish a Notice of Application and Preliminary Decision that provides an opportunity for public comment and to request a public meeting.

(12) if notice is for air quality applications for a permit under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), filed on or before January 1, 2018, a Multiple Plant Permit under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits), or for a Plant-wide Applicability Limit under Chapter 116 of this title, a statement that any person is entitled to request a public meeting or a notice and comment hearing, as applicable from the commission.

(13) notification that a person residing within 440 yards of a concrete batch plant without enhanced controls under a standard permit adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) is an affected person who is entitled to request a contested case hearing;

(14) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Commission on Environmental Quality;" and

(15) any additional information required by the executive director or needed to satisfy federal public notice requirements.

(f) The chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.602 of this title (relating to Mailed Notice). When notice of application and preliminary decision by

publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection.

(1) the information required by subsection (e) of this section;

(2) a summary of the executive director's preliminary decision and air quality analysis and whether the executive director has prepared a draft permit;

(3) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision and air quality analysis are available for review and copying;

(4) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision and air quality analysis may be submitted, or a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(5) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public

interest in the proposed activity;

(6) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications), a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment; and

(7) in addition to the requirements in paragraphs (1) - (6) of this subsection, for air quality permit applications filed on or after July 1, 2010 for permits under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review):

(A) the degree of increment consumption that is expected from the source or modification;

(B) a statement that the state's air quality analysis is available for comment;

(C) the deadline to request a public meeting; and

(D) for air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title, a statement that the executive director will hold a public meeting at the request of any interested person.

(g) When notice of a public meeting by publication or by mail is required by Subchapters H and K of this chapter for air quality applications filed on or after July 1, 2010, the text of the notice must include the information in this subparagraph. Air quality permit applications filed before July 1, 2010 are governed by the rules in Subchapter H and K of this chapter as they existed immediately before July 1, 2010, and those rules are continued in effect for that purpose.

(1) the information required by subsection (e)(1) - (3), (4)(A), (6), (8), (9) and (11) of this section;

(2) the date, time, and place of the public meeting, and a brief description of the nature and purpose of the meeting, including the applicable rules and procedures; and

(3) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(h) When notice of a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the following information:

(1) the information required by subsection (e)(1) - (3), (6), (9) and (15) of this section;

and

(2) the date, time, and place of the hearing, and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures; and

§39.418. Notice of Receipt of Application and Intent to Obtain Permit.

(a) When the executive director determines that an application is administratively complete, the chief clerk shall mail this determination concurrently with the Notice of Receipt of Application and Intent to Obtain Permit to the applicant.

(b) Not later than 30 days after the executive director declares an application administratively complete:

(1) the applicant, other than applicants for air quality permits, [applicant] shall publish Notice of Receipt of Application and Intent to Obtain Permit once under §39.405(f)(1) of this title (relating to General Notice Provisions) and, for solid waste applications and injection well applications, also under §39.405(f)(2) of this title. The applicant shall also publish the notice under §39.405(h) of this title, if applicable;

(2) the chief clerk shall mail Notice of Receipt of Application and Intent to Obtain Permit to those listed in §39.413 of this title (relating to Mailed Notice), and to:

(A) the state senator and representative who represent the general area in which the facility is located or proposed to be located; and

(B) the river authority in which the facility is located or proposed to be located if the application is under Texas Water Code, Chapter 26; and

(3) the notice must include the applicable information required by §39.411(b) of this title (relating to Text of Public Notice).

(c) [(3)] For [for] air quality permit applications, [paragraphs (1) and (2) of this subsection do not apply. Instead] the applicant shall provide notice as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Permit Applications). Specifically, publication in the newspaper must follow the requirements under §39.603 of this title (relating to Newspaper Notice), sign posting must follow the requirements under §39.604 of this title (relating to Sign-Posting), and the chief clerk shall mail notice according to §39.602 of this title (relating to Mailed Notice). The applicant shall also follow the requirements, as applicable, under §39.405(h) of this title. [; and]

[(4) the notice must include the applicable information required by §39.411(b) of this title (relating to Text of Public Notice).]

§39.419. Notice of Application and Preliminary Decision.

(a) After technical review is complete, the executive director shall file the preliminary decision

and the draft permit with the chief clerk, except for air applications under subsection (e) [(e)(1)] of this section. The chief clerk shall mail the preliminary decision concurrently with the Notice of Application and Preliminary Decision. Then, when this chapter requires notice under this section, notice must be given as required by subsections (b) - (e) of this section.

(b) The applicant shall publish Notice of Application and Preliminary Decision at least once in the same newspaper as the Notice of Receipt of Application and Intent to Obtain Permit, unless there are different requirements in this section or a specific subchapter in this chapter for a particular type of permit. The applicant shall also publish the notice under §39.405(h) of this title (relating to General Notice Provisions), if applicable.

(c) Unless mailed notice is otherwise provided under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice).

(d) The notice must include the information required by §39.411(c) of this title (relating to Text of Public Notice).

(e) For air applications the following apply.

(1) Air quality permit applications that are filed on or after July 1, 2010, are subject to this paragraph. Applications filed before July 1, 2010 are governed by the rules as they existed immediately before July 1, 2010, and those rule are continued in effect for that purpose. Notice of Application and Preliminary Decision must be published as specified in Subchapter K of this chapter

(relating to Public Notice of Air Quality Permit Applications) and, as applicable, under §39.405(h) of this title, unless the application is for any renewal application of an air quality permit that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History). [The applicant is not required to publish Notice of Application and Preliminary Decision, if:]

[(A) no hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit;]

[(B) a hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit and the request is withdrawn before the date the preliminary decision is issued;]

[(C)] the application is for any amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted unless the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations; or]

[(D) the application is for initial issuance of a permit described in §39.403(b)(11)

or (12) of this title (related to Applicability) or§39.404 of this title (relating to Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities and for Applications for Permits for Specific Designated Facilities);]

(2) If notice under this section is required, the chief clerk [agency] shall mail notice according to §39.602 of this title (relating to Mailed Notice).

[(3) Notice of Application and Preliminary Decision must be published as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Applications) and, as applicable, under §39.405(h) of this title for permits that are not exempt under paragraph (1)(A) - (D) of this subsection. or are for the following federal preconstruction approvals:]

[(A) applications under Chapter 116, Subchapter B, Division 5 of this title (relating to Nonattainment Review);]

[(B) applications under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review); and]

[(C) applications under Chapter 116, Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63))]

(3) [(4)] If the applicant is seeking authorization by permit, registration, license, or other

type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), any application submitted on or before January 1, 2018, shall be subject to the public notice and participation requirements in Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities).

§39.420. Transmittal of the Executive Director's Response to Comments and Decision.

(a) Except for air quality permit applications, when [When] required by and subject to §55.156 of this title (relating to Public Comment Processing), after the close of the comment period, the chief clerk shall transmit to the people listed in subsection (b) of this section the following information:

(1) the executive director's decision;

(2) the executive director's response to public comments;

(3) instructions for requesting that the commission reconsider the executive director's decision; and

(4) instructions for requesting a contested case hearing.

(b) The following persons shall be sent the information listed in subsection (a) of this section:

(1) the applicant;

(2) any person who requested to be on the mailing list for the permit action;

(3) any person who submitted comments during the public comment period;

(4) any person who timely filed a request for a contested case hearing;

(5) Office of the Public Interest Counsel; and

(6) Office of Public Assistance.

(c) When required by and subject to §55.156 of this title, for air quality permit applications, after the close of the comment period, the chief clerk shall:

(1) transmit to the people listed in subsection (d) of this section the following information:

(A) the executive director's decision;

(B) the executive director's response to public comments;

(C) instructions for requesting that the commission reconsider the executive director's decision; and

(D) instructions, which include the statements in clause (ii) of this subparagraph, for requesting a contested case hearing for applications:

(i) for the following types of applications:

(I) described in §39.402(a)(4), (8) and (9) of this title;

(II) described in §39.402(a)(1) and (2) of this title which are subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title, and

(III) described in §39.402(a)(1) and (2) of this title which are not subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title, and for which hearing requests were received by the end of the 30-day comment period following the final publication of Notice of Receipt of Application and Intent to Obtain Permit, and these requests were not withdrawn.

(ii) the following statements must be included:

(I) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission;

(II) that a contested case hearing request must include the requestor's location relative to the proposed facility or activity;

(III) that a contested case hearing request should include a description of how and why the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(IV) that only relevant and material disputed issues of fact raised during the comment period can be considered if a contested case hearing request is granted; and

(V) that a contested case hearing request may not be based on issues raised solely in a comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment; and

(2) make available by electronic means on the commission's Web site the executive director's decision and the executive director's response to public comments.

(d) The following persons shall be sent the information listed in subsection (c) of this section:

(1) the applicant;

(2) any person who requested to be on the mailing list for the permit action;

(3) any person who submitted comments during the public comment period;

(4) any person who timely filed a request for a contested case hearing;

(5) Office of the Public Interest Counsel; and

(6) Office of Public Assistance.

(e) [(c)] For air quality permit applications which meet the following conditions, items listed in subsection (c)(3) and (4) of this section are not required to be included in the transmittals:

[(1) applications for initial issuance of permits under Texas Health and Safety Code, §§382.05183, 382.05185(c) and (d), 382.05186, and 382.0519;]

[(2) applications for initial issuance of electric generating facility permits under Texas Utilities Code, §39.264;]

[(3) applications for which no timely hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain a Permit;]

(1) [(4)] applications for which a timely hearing request is submitted in response to the

Notice of Receipt of Application and Intent to Obtain Permit and the request is withdrawn before the date the preliminary decision is issued; or

(2) [(5)] the application is for any [amendment, modification, or] renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted unless the application involves a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History) [for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations].

(f) [(d)] For applications for which all timely comments and requests have been withdrawn before the filing of the executive director's response to comments, the chief clerk shall transmit only the items listed in subsection (a)(1) and (2) of this section and the executive director may act on the application under §50.133 of this title (relating to Executive Director Action on Application or WQMP Update).

(g) [(e)] For post-closure order applications under Subchapter N of this chapter (relating to Public Notice of Post-Closure Orders), the chief clerk shall transmit only items listed in subsection (a)(1) and (2) of this section to the people listed in subsection (b)(1) - (3), (5), and (6) of this section.

(h) [(f)] For applications for permits under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), the chief clerk will not transmit the item listed in subsection

(a)(4) of this section.

SUBCHAPTER I: PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

§39.501

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, Chapter 5, Subchapter M, concerning Environmental Permitting Procedures, that authorizes the commission to adopt rules governing permitting procedures for various permitting matters including solid waste matters authorized under the Solid Waste Disposal Act, Texas Health and Safety Code (THSC), Chapter 361; and THSC, §361.024, concerning Rules and Standards, which authorizes the commission to adopt rules concerning the management and control of solid waste. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency.

The amendment implements TWC, §§5.102, 5.103, 5.105, Chapter 5, Subchapter M, and the Solid Waste Disposal Act, THSC, Chapter 361, and Texas Government Code, §§2001.004, 2001.006, and 2001.142.

§39.501. Application for Municipal Solid Waste Permit.

(a) Applicability. This section applies to applications for municipal solid waste permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication local review committee process. If an applicant for a municipal solid waste permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit to the executive director a notice of intent to file an application, setting forth the proposed location and type of facility. The executive director shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must also be mailed to the mayor of the municipality. The executive director shall also mail notice to the appropriate regional solid waste planning agency or council of government. The mailing must be by certified mail.

(c) Notice of Receipt of Application and Intent to Obtain a Permit.

(1) Upon the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete:

(A) notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) and, if a newspaper is not published in the county, then the applicant shall publish notice in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located. This notice must contain the text as required by §39.411(b)(1) - (11) [§39.411(b)(1) - (9), (11), and (12)] of this title (relating to Text of Public Notice);

(B) the chief clerk shall publish Notice of Receipt of Application and Intent to Obtain Permit in the *Texas Register*; and

(C) the executive director or chief clerk shall mail the Notice of Receipt of Application and Intent to Obtain Permit, along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). The notice must be published after the chief clerk has mailed the Notice of Application and Preliminary Decision to the applicant. The notice must contain the text as required by §39.411(c)(1) - (6) of this title.

(e) Notice of public meeting.

(1) If an application for a new facility is filed before September 1, 2005:

(A) the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; and

(B) the applicant shall hold a public meeting in the county in which the facility is proposed to be located. This meeting must be held before the 45th day after the date the application is filed.

(2) If an application for a new facility is filed on or after September 1, 2005:

(A) the agency:

(i) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(II) if the executive director determines that there is substantial public interest in the proposed facility; and

(B) the applicant may hold a public meeting in the county in which the facility is proposed to be located.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location at which the facility is proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location at which the facility is proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is proposed to be located.

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of paragraph (1)(A) or (2)(A) of this subsection if public notice is provided under this subsection.

(5) The applicant shall publish notice of any public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). For public meetings under paragraph (1)(B) or (2)(B) of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead must contain at least the following information:

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;

(D) location and availability of copies of the application;

(E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person for the applicant

from whom interested persons may obtain further information.

(6) For public meetings held by the agency under paragraph (1)(A) or (2)(A) of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(f) Notice of hearing.

(1) This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) The applicant shall publish notice at least once under §39.405(f)(2) of this title.

(3) Mailed notice.

(A) If the applicant proposes a new facility, the applicant shall mail notice of the hearing to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying

compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes to amend a permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(4) Notice under paragraphs (2) and (3)(B) of this subsection must be completed at least 30 days before the hearing.

SUBCHAPTER J: PUBLIC NOTICE OF WATER QUALITY APPLICATIONS AND WATER QUALITY MANAGEMENT PLANS

§39.551

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, Chapter 5, Subchapter M, concerning Environmental Permitting Procedures, that authorizes the commission to adopt rules governing permitting procedures for various permitting matters including water quality matters authorized under TWC, Chapter 26. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency.

The amendment implements TWC, §§5.102, 5.103, 5.105; TWC Chapter 5, Subchapter M, and TWC, Chapter 26; and Texas Government Code, §§2001.004, 2001.006, and 2001.142.

§39.551. Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge.

(a) Applicability. This section applies to applications for wastewater discharge permits, including disposal of sewage sludge or water treatment sludge applications that are declared administratively complete on or after September 1, 1999. This subchapter does not apply to registrations and notifications for sludge disposal under §312.13 of this title (relating to Actions and Notice).

(b) Notice of receipt of application and intent to obtain permit.

(1) Notice under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) is required to be published no later than 30 days after the executive director deems an application administratively complete. This notice must contain the text as required by §39.411(b)(1) - (9) and (11) [§39.411(b)(1) - (9) and (12)] of this title (relating to Text of Public Notice). In addition to the requirements of §39.418 of this title, the chief clerk shall mail notice to the School Land Board if the application will affect lands dedicated to the permanent school fund. The notice shall be in the form required by Texas Water Code, §5.115(c).

(2) Mailed notice to adjacent or downstream landowners is not required for:

(A) an application to renew a permit;

(B) an application for a new Texas Pollutant Discharge Elimination System (TPDES) permit for a discharge authorized by an existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendments); or

(C) an application for a new permit or major amendment to a TPDES permit that authorizes the discharges from a municipal separate storm sewer system.

(3) For permits listed in paragraph (2)(C) of this subsection, the executive director will require the applicant to post a copy of the notice of receipt of application and intent to obtain a permit. The notice must be posted within 30 days of the application being declared administratively complete and remain posted until the commission has taken final action on the application. The notice must be posted at a place convenient and readily accessible to the public in the administrative offices of the political subdivision in the county in which the MS4 or discharge is located.

(c) Notice of application and preliminary decision. Notice under §39.419 of this title (relating to Notice of Application and Preliminary Decision) is required to be published after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text required by §39.411(b)(1) - (3), (5) - (7), (9), and (11) and (c)(2) - (6) [§39.411(b)(1) - (3), (5) - (7), (9), and (12), and (c)(2) - (6)] of this title. In addition to §39.419 of this title, for all applications except applications to renew permits, the following provisions apply.

(1) The applicant shall publish notice of application and preliminary decision at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

(2) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(A) For any application involving an average daily discharge of five million gallons or more, in addition to the persons listed in §39.413 of this title, the chief clerk shall mail notice to each county judge in the county or counties located within 100 statute miles of the point of discharge who has requested in writing that the commission give notice, and through which water into or adjacent to which waste or pollutants are to be discharged under the permit, flows after the discharge.

(B) If the notice of the receipt of application and intent to obtain a permit was mailed more than two years prior to the time that notice of application and preliminary decision is scheduled by the executive director to be mailed, the applicant must submit an updated landowner map, landowner list, and any associated information for mailing the notice of application and preliminary decision. Notwithstanding this requirement, the Executive Director may require an updated landowner map, landowner list, and any associated information for mailing the notice of the application and preliminary decision if circumstances in the area have significantly changed that warrant updated lists.

(3) The notice must set a deadline to file public comment with the chief clerk that is not less than 30 days after newspaper publication. However, the notice may be mailed to the county judges under paragraph (2) of this subsection no later than 20 days before the deadline to file public comment.

(4) For TPDES permits, the text of the notice shall include:

(A) everything that is required by §39.411(b)(1) - (3), (5) - (7), (9), and (11) and (c)(2) - (6) [§39.411(b)(1) - (3), (5) - (7), (9), and (12), and (c)(2) - (6)] of this title;

(B) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(C) for applications concerning the disposal of sludge:

(i) the use and disposal practices;

(ii) the location of the sludge treatment works treating domestic sewage sludge; and

(iii) the use and disposal sites known at the time of permit application.

(5) Mailed notice to adjacent or downstream landowners is not required for:

(A) an application to renew a permit;

(B) an application for a new TPDES permit for a discharge authorized by an existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title; or

(C) an application for a new permit or major amendment to a TPDES permit that authorizes the discharges from a municipal separate storm sewer system.

(6) For permits listed in paragraph (5)(C) of this subsection, the executive director will require the applicant to post a copy of the notice of application and preliminary decision. The notice must be posted on or before the first day of published newspaper notice and must remain posted until the commission has taken final action on the application. The notice must be posted at a place convenient and readily accessible to the public in the administrative offices of the political subdivision in the county in which the MS4 or discharge is located.

(d) Notice of application and preliminary decision for certain TPDES permits. For a new TPDES permit for which the discharge is authorized by an existing state permit issued before September 14, 1998, the following shall apply:

(1) If the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title, the following mailed and published notice is required.

(A) The applicant shall publish notice of the application and preliminary decision at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

(B) The chief clerk shall mail notice of the application and preliminary decision, providing an opportunity to submit public comments, to request a public meeting, or to request a public hearing to those listed in §39.413 of this title.

(C) The notice must set a deadline to file public comment, or to request a public meeting, with the chief clerk that is at least 30 days after newspaper publication.

(D) The text of the notice shall include:

(i) everything that is required by §39.411(b)(1) - (3), (5) - (7), (9), and (11) and (c)(2) - (6) [§39.411(b)(1) - (3), (5) - (7), (9), and (12), and (c)(2) - (6)] of this title;

(ii) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(iii) for applications concerning the disposal of sludge:

(I) the use and disposal practices;

(II) the location of the sludge treatment works treating domestic sewage sludge; and

(III) the use and disposal sites known at the time of permit application.

(2) If the application proposes any term or condition that would constitute a major amendment to the state permit under §305.62 of this title, the applicant must follow the notice requirements of subsection (b) of this section.

(e) Notice for other types of applications. Except as required by subsections (a), (b), and (c) of this section, the following notice is required for certain applications.

(1) For an application for a minor amendment to a permit other than a TPDES permit, or for an application for a minor modification of a TPDES permit, under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits),

the chief clerk shall mail notice, that the executive director has determined the application is technically complete and has prepared a draft permit, to the mayor and health authorities for the city or town, and to the county judge and health authorities for the county in which the waste will be discharged. The notice shall state the deadline to file public comment, which shall be no earlier than ten days after mailing notice.

(2) For an application for a renewal of a confined animal feeding operation permit which was issued between July 1, 1974, and December 31, 1977, for which the applicant does not propose to discharge into or adjacent to water in the state and does not seek to change materially the pattern or place of disposal, no notice is required.

(3) For an application for a minor amendment to a TPDES permit under Chapter 305, Subchapter D of this title, the following requirements apply.

(A) The chief clerk shall mail notice of the application and preliminary decision, providing an opportunity to submit public comments and to request a public meeting to:

(i) the mayor and health authorities of the city or town in which the facility is or will be located or in which pollutants are or will be discharged;

(ii) the county judge and health authorities of the county in which the facility is or will be located or in which pollutants are or will be discharged;

(iii) if applicable, state and federal agencies for which notice is required in 40 Code of Federal Regulations (CFR) §124.10(c);

(iv) if applicable, persons on a mailing list developed and maintained according to 40 CFR §124.10(c)(1)(ix);

(v) the applicant;

(vi) persons on a relevant mailing list kept under §39.407 of this title (relating to Mailing Lists); and

(vii) any other person the executive director or chief clerk may elect to include.

(B) For TPDES major facility permits as designated by the United States Environmental Protection Agency on an annual basis, notice shall be published in the *Texas Register*.

(C) The text shall meet the requirements in §39.411(b)(1) - (4)(A), (6), (7), (9), and (11) and (c)(4) - (6) [§39.411(b)(1) - (4)(A), (6), (7), (9), and (12), and (c)(4) - (6)] of this title.

(D) The notice shall provide at least a 30-day public comment period.

(E) The executive director shall prepare a response to all relevant and material or significant public comments received by the commission under §55.152 of this title (relating to Public Comment Period).

(f) Notice of contested case hearing.

(1) This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Not less than 30 days before the hearing, the applicant shall publish notice at least once in a newspaper regularly published or circulated in each county where, by virtue of the county's geographical relation to the subject matter of the hearing, a person may reasonably believe persons reside who may be affected by the action that may be taken as a result of the hearing. The executive director shall provide to the chief clerk a list of the appropriate counties.

(3) Not less than 30 days before the hearing, the chief clerk shall mail notice to the persons listed in §39.413 of this title, except that mailed notice to adjacent or downstream landowners is not required for an application to renew a permit.

(4) For TPDES permits, the text of notice shall include:

(A) everything that is required by §39.411(d)(1) and (2) of this title;

(B) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(C) for applications concerning the disposal of sludge:

(i) the use and disposal practices;

(ii) the location of the sludge treatment works treating domestic sewage sludge; and

(iii) the use and disposal sites known at the time of permit application.

(g) Notice for discharges with a thermal component. For requests for a discharge with a thermal component filed pursuant to Clean Water Act, §316(a), 40 CFR Part 124, Subsection D, §124.57(a), public notice, which is in effect as of the date of TPDES program authorization, as amended, is adopted by reference. A copy of 40 CFR Part 124 is available for inspection at the agency's library located at the commission's central office located at 12100 Park 35 Circle, Building A, Austin.

SUBCHAPTER K: PUBLIC NOTICE OF AIR QUALITY PERMIT APPLICATIONS

§§39.601 - 39.605

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amendments are also proposed under THSC, §382.020, concerning control of emissions from facilities that handle certain agricultural products, THSC, §382.051, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0518, which authorizes the commission to issue preconstruction permits; THSC, §382.056, which requires an applicant for a permit issued under §382.0518 to publish notice of intent to obtain a permit; THSC, §382.055, which establishes the commission's authority to review and renew preconstruction permits. The amendments are also proposed under THSC, §382.05101,

concerning De Minimis Air Contaminants; THSC, §382.0291, concerning Public Hearing Procedures; THSC, §382.040, concerning Documents; Public Property; THSC, §382.0512, concerning Modification of Existing Facility; THSC, §382.0515, concerning Application for Permit; THSC, §382.0516, concerning Notice to State Senator, State Representative, and Certain Local Officials; THSC, §382.057, concerning Exemption; THSC, §382.05186, concerning Pipeline Facilities Permits; THSC, §382.05192, concerning Review and Renewal of Emissions Reduction and Multiple Plant Permits; THSC, §382.05194, concerning Multiple Plant Permit; and THSC, §382.05195, concerning Standard Permit; THSC, §382.05199, concerning Standard Permit for Certain Concrete Batch Plants: Notice and Hearing; THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant under Permit by Rule, Standard Permit, or Exemption. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The amendments are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq*., which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The amendments implement THSC, §§382.002, 382.011, 382.012, 382.017, 382.020, 382.051, 382.0518, 382.056, 382.055, 382.05101, 382.0291, 382.040, 382.0512, 382.0515, 382.0516, 382.057, 382.05186, 382.05192, 382.05194, 382.05195, 382.05199, and 382.058; Texas Government Code, §§2001.004, 2001.006, and 2001.142; and FCAA, 42 USC, §§7401 *et seq*.

§39.601. Applicability.

Air quality permit applications or registrations that are declared administratively complete before September 1, 1999 are subject to the requirements of Chapter 116, Subchapter B, Division 3 (relating to Public Notification and Comment Procedures) (effective March 21, 1999) or [§106.5 of this title (relating to Public Notice)] (effective December 24, 1998). Air quality permit applications or registrations that are declared administratively complete by the executive director on or after September 1, 1999 are subject to this subchapter.

§39.602. Mailed Notice.

(a) When this chapter requires notice for air quality permit applications, the chief clerk shall mail notice [only] to: [those persons listed in §39.413 (9), (11), (12), and (14) of this title (relating to Mailed Notice)]

(1) the applicant;

(2) persons on a relevant mailing list kept under §39.407 of this title (relating to Mailing Lists);

(3) persons who filed public comment or hearing requests on or before the deadline for filing public comment or hearing requests; and

(4) any other person the executive director or chief clerk may elect to include.

(b) When Notice of Receipt of Application and Intent to Obtain Permit is required, mailed notice shall be sent to the state senator and representative who represent the area in which the facility is or will be located.

§39.603. Newspaper Notice.

(a) Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) is required to be published no later than 30 days after the executive director declares an application administratively complete. This notice must contain the text as required by §39.411(e) [§39.411(b)(1) - (6) and (8) - (10)] of this title (relating to Text of Public Notice). This notice is not required for Plant-wide Applicability Limit permit applications.

(b) Notice of Application and Preliminary Decision under §39.419 of this title (relating to Notice of Application and Preliminary Decision) is required to be published within 33 days after the chief clerk has mailed the preliminary decision concurrently with the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(f) [§39.411(c)(1) - (6)] of this title.

(c) General newspaper notice. Unless otherwise specified, when this chapter requires published

notice of an air application, the applicant shall publish notice in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility, as follows.

(1) One notice must be published in the public notice section of the newspaper and must comply with §39.411(e) - (g) [§39.411] of this title.

(2) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

(A) permit application number;

(B) company name;

(C) type of facility;

(D) description of the location of the facility; and

(E) a note that additional information is in the public notice section of the same issue.

(d) Alternative publication procedures for small businesses.

(1) The applicant does not have to comply with subsection (c)(2) of this section if all of the following conditions are met:

(A) the applicant and source meets the definition of a small business stationary source in Texas Water Code, §5.135 including, but not limited to, those which:

(i) are not a major stationary source for federal air quality permitting;

(ii) do not emit 50 tons or more per year of any regulated air pollutant;

(iii) emit less than 75 tons per year of all regulated air pollutants combined; and

(iv) are owned or operated by a person that employs 100 or fewer individuals; and

(B) if the applicant's site meets the emission limits in §106.4(a) of this title (relating to Requirements for Permitting by Rule [Exemption from Permitting]) it will be considered to not have a significant effect on air quality.

(2) The executive director may post information regarding pending air permit

applications on its website, such as the permit number, company name, project type, facility type, nearest city, county, date public notice authorized, information on comment periods, and information on how to contact the agency for further information.

(e) If an air application is referred to State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings), the applicant shall publish notice once in a newspaper as described in subsection (c) of this section, containing the information under §39.411(h) [§39.411(d)] of this title. This notice must be published and affidavits filed with the chief clerk no later than 30 days before the scheduled date of the hearing.

§39.604. Sign-Posting.

(a) At the applicant's expense, a sign or signs must be placed at the site of the existing or proposed facility declaring the filing of an application for a permit and stating the manner in which the commission may be contacted for further information. Such signs must be provided by the applicant and must substantially meet the following requirements:

(1) Signs must consist of dark lettering on a white background and must be no smaller than 18 inches by 28 inches and all lettering must be no less than 1-1/2 inches in size and block printed capital lettering;

(2) Signs must be headed by the words listed in the following subparagraph:

(A) "PROPOSED AIR QUALITY PERMIT" for new permits and permit amendments; or

(B) "PROPOSED RENEWAL OF AIR QUALITY PERMIT" for permit renewals.

(3) Signs must include the words "APPLICATION NO." and the number of the permit application. More than one application number may be included on the signs if the respective public comment periods coincide;

(4) Signs must include the words "for further information contact";

(5) Signs must include the words "Texas Commission on Environmental Quality" and the address of the appropriate commission regional office;

(6) Signs must include the telephone number of the appropriate commission office;

(b) The sign or signs must be in place by the date of publication of the Notice of Receipt of Application and Intent to Obtain Permit and must remain in place and legible throughout that public comment period. The applicant shall provide a verification that the sign posting was conducted according to this section.

(c) Each sign placed at the site must be located within ten feet of every property line paralleling a

public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs must be required along any property line paralleling a public highway, street, or road. The executive director may approve variations from these requirements if it is determined that alternative sign posting plans proposed by the applicant are more effective in providing notice to the public. This section's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless directly involved by the permit application.

(d) The executive director may approve variations from the requirements of this subsection if the applicant has demonstrated that it is not practical to comply with the specific requirements of this subsection and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. The approval from the executive director under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) Alternative language sign posting is required whenever alternative language newspaper notice would be required under §39.405(h) of this title (relating to General Notice Provisions). The applicant shall post additional signs in each alternative language in which the bilingual education program is taught. The alternative language signs must be posted adjacent to each English language sign required in this section. The alternative language sign posting requirements of this subsection must be satisfied without regard to whether alternative language newspaper notice is waived under §39.405(h)(8) [§39.405(h)(7)] of this title. The alternative language signs must meet all other requirements of this section.

§39.605. Notice to Affected Agencies.

In addition to the requirements in §39.405(f)(3) [§39.405(f)] of this title (relating to General Notice Provisions):

(1) when newspaper notices are published under this section, the applicant shall furnish a copy of the notices and affidavit to:

(A) the EPA regional administrator in Dallas;

(B) all local air pollution control agencies with jurisdiction in the county in which the construction is to occur; [and]

(C) the air pollution control agency of any nearby state in which air quality may be adversely affected by the emissions from the new or modified facility; and

(D) if notice is for an application filed on or after July 1, 2010 for a Prevention of Significant Deterioration or Nonattainment permit under Chapter 116, Subchapter B of this title (relating to New Source Review Permits), the chief executives of the city and county where the source would be located, and any Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification;

(2) when sign posting is required under this section, the applicant shall furnish a copy of sign posting verification, within 10 business days after the end of the comment period associated with the

notice under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), to:

(A) the chief clerk;

(B) the executive director; and

(C) those listed in paragraph (1)(A) - (C) of this section; and

(3) when alternative language waiver verification are required under this section, the applicant shall furnish a copy to those listed in paragraph (2)(A) - (C) of this section.

SUBCHAPTER K: PUBLIC NOTICE OF AIR QUALITY APPLICATIONS

[§39.606]

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The repeal is also proposed under THSC, §382.020, concerning control of emissions from facilities that handle certain agricultural products, THSC, §382.051, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0518, which authorizes the commission to issue preconstruction permits; THSC, §382.056, which requires an applicant for a permit issued under §382.0518 to publish notice of intent to obtain a permit; THSC, §382.055, which establishes the commission's authority to review and renew preconstruction permits. The repeal is also proposed under THSC, §382.05101, concerning De Minimis

Air Contaminants; THSC, §382.0291, concerning Public Hearing Procedures; THSC, §382.040, concerning Documents; Public Property; THSC, §382.0512, concerning Modification of Existing Facility; THSC, §382.0515, concerning Application for Permit; THSC, §382.0516, concerning Notice to State Senator, State Representative, and Certain Local Officials; THSC, §382.057, concerning Exemption; THSC, §382.05186, concerning Pipeline Facilities Permits; THSC, §382.05192, concerning Review and Renewal of Emissions Reduction and Multiple Plant Permits; THSC, §382.05194, concerning Multiple Plant Permit; and THSC, §382.05195, concerning Standard Permit; THSC, §382.05199, concerning Standard Permit for Certain Concrete Batch Plants: Notice and Hearing; THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant under Permit by Rule, Standard Permit, or Exemption. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The repeal is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq*., which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The repeal implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.020, 382.051, 382.0518, 382.056, 382.055, 382.05101, 382.0291, 382.040, 382.0512, 382.0515, 382.0516, 382.057, 382.05186, 382.05192, 382.05194, 382.05195, 382.05199, and 382.058; Texas Government Code, §§2001.004, 2001.006, and 2001.142; and FCAA, 42 USC, §§7401 *et seq*.

[§39.606. Alternative Means of Notice for Permits for Grandfathered Facilities.]

[(a) An applicant for a permit, under Texas Health and Safety Code, §§382.05183, 382.05185(c) and (d), 382.05186, or 382.0519, for a facility that constitutes or is part of a small business stationary source, as defined in Texas Health and Safety Code, §382.0365(g)(2), may request that the executive director approve an alternative means from the notice methods required under this subchapter.]

[(b) The executive director may approve the request upon a determination that the alternative means will result in equal or better communication with the public, considering the following factors:]

[(1) the effectiveness of the method of notice in reaching potentially affected persons;]

[(2) the cost of the method of notice; and]

[(3) whether the method is consistent with federal requirements.]

[(c) The applicant may not use the alternative means of notice until the executive director gives written approval.]

[(d) Notice of hearing. The applicant shall publish notice of the hearing in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility. The notice must be published not

less than 30 days before the hearing.]

SUBCHAPTER L: PUBLIC NOTICE OF INJECTION WELL AND OTHER SPECIFIC APPLICATIONS

§39.651, §39.653

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, Chapter 5, Subchapter M, concerning Environmental Permitting Procedures, that authorizes the commission to adopt rules governing permitting procedures for various permitting matters including authorizations relating to injection wells authorized under the Injection Well Act, TWC, Chapter 27 and under the Solid Waste Disposal Act, Chapter 361, of the Texas Health and Safety Code (THSC). Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency.

The amendments implement TWC, §§5.102, 5.103, 5.105, TWC, Chapter 5, Subchapter M, and the Injection Well Act, TWC, Chapter 27; and THSC, Chapter 361; and Texas Government Code, §§2001.004, 2001.006, and 2001.142.

§39.651. Application for Injection Well Permit.

(a) Applicability. This subchapter applies to applications for injection well permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication local review committee process. If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must be mailed to the mayor of the municipality.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) On the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete, notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain a Permit). This notice must contain the text as required by §39.411(b)(1) - (9) and (11) [§39.411(b)(1) - (9) and (12)] of this title (relating to Text of Public Notice). Notice under

§39.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).

(3) After the executive director determines that the application is administratively complete, in addition to the requirements of §39.418 of this title, notice must be given to the School Land Board, if the application will affect lands dedicated to the permanent school fund. The notice must be in the form required by Texas Water Code, §5.115(c).

(4) For notice of receipt of application and intent to obtain a permit concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility;

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(E) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(5) The chief clerk or executive director shall also mail a copy of the application or a summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located and to the county judge and the health authority of the county in which the facility is located.

(6) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once under §39.405(f)(2) of this title (relating to General Notice Provisions) after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title. In addition to the requirements of §39.405(h) and §39.419 of this title, the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that is adjacent or contiguous to each county in which the proposed facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice) and to local governments located in the county of the facility. "Local governments" have the meaning as defined in Texas Water Code, Chapter 26.

(4) For Notice of Application and Preliminary Decision concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility;

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(E) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(5) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title (relating to Application for Industrial or Hazardous Waste Facility Permit).

(6) The deadline for public comments on industrial solid waste or Class III injection well permit applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) If an application for a new hazardous waste facility is filed:

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title (relating to

Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(II) if the executive director determines that there is substantial public interest in the proposed facility.

(2) If an application for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit is filed:

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is located to receive public comment on the application if a person affected files with the chief clerk a request for a public meeting concerning the application before the deadline to file public comment or to file requests for reconsideration or hearing; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title in the county in

which the facility is located to receive public comment on the application; but

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is located; or

(II) if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location in which the facility is located or proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location in which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or

proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided in accordance with this subsection.

(5) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters).

(6) The chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of contested case hearing.

(1) Applicability. This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns a facility other than a hazardous waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county in which the proposed facility is located.

(B) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(C) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). The notice must appear in the section of the newspaper containing state or local news items. The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) For all applications concerning underground injection wells, the chief clerk

shall mail notice to persons listed in §39.413 of this title.

(B) For notice of hearings concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(i) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(ii) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(iii) persons who own mineral rights underlying the existing or proposed injection well facility;

(iv) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(v) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(C) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address, not listed under subparagraph (A) of this paragraph, located within 1/2 mile of the facility and to each owner of real property located within

1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the contested case hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title.

(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the contested case hearing.

(g) Approval. All published notices required by this section must be in a form approved by the executive director prior to publication.

§39.653. Application for Production Area Authorization.

(a) Applicability. This section applies to an application for a production area authorization under Chapter 331 of this title (relating to Underground Injection Control).

(b) Notice of Receipt of Application and Intent to Obtain Permit. After the executive director

determines that the application is administratively complete, notice shall be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). This notice must contain the text as required by §39.411(b)(1) - (9) and (11) [§39.411(b)(1) - (9) and (12)] of this title (relating to Text of Public Notice). The chief clerk shall also mail notice to:

(1) persons who own the property on which the existing or proposed production area is or will be located, if different from the applicant;

(2) landowners adjacent to the property on which the existing or proposed production area is or will be located;

(3) persons who own mineral rights underlying the existing or proposed production area;

(4) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed production area is or will be located; and

(5) any groundwater conservation district established in the county in which the existing or proposed production area is or will be located.

(c) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) shall be published once under §39.405(f)(2) of this title (relating to General Notice Provisions) after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must

contain the text as required by §39.411(c)(1) - (6) of this title. The notice shall specify the deadline to file with the chief clerk public comment, which is 30 days after mailing. The chief clerk shall also mail notice to:

(1) persons who own the property on which the existing or proposed production area is or will be located, if different from the applicant;

(2) landowners adjacent to the property on which the existing or proposed production area is or will be located;

(3) persons who own mineral rights underlying the existing or proposed production area;

(4) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed production area is or will be located; and

(5) any groundwater conservation district established in the county in which the existing or proposed production area is or will be located.

(d) Notice of contested case hearing.

(1) This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) The applicant shall publish notice at least once under §39.405(f)(2) of this title.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(4) Notice under paragraphs (2) and (3) this subsection shall be completed at least 30 days before the hearing.

SUBCHAPTER M: PUBLIC NOTICE FOR RADIOACTIVE MATERIAL LICENSES

§39.709

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and Texas Health and Safety Code (THSC), §401.051, concerning Adoption of Rules and Guidelines, which authorizes the Commission to adopt rules and guidelines relating to control of sources of radiation. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency.

The amendment implements TWC, §§5.102, 5.103, and 5.105; Texas Radiation Control Act, THSC, Chapter 401; and Texas Government Code, §§2001.004, 2001.006, and 2001.142.

§39.709. Notice of Contested Case Hearing on Application.

(a) The requirements of this section apply when an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested

Case Hearings).

(b) Except as provided in subsection (d) of this section, for applications under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this title (relating to Decommissioning Standards), Subchapter K of this title (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste From Public Water Systems), or Subchapter L of this title (relating to Licensing of Source Material Recovery and By-product Material Disposal Facilities), notice must be mailed no later than 30 days before the hearing. For applications under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) or Subchapter M of this title (relating to Licensing of Radioactive Substances Processing and Storage Facilities), notice must be mailed no later than 31 days before the hearing.

(c) When notice is required under this section, the text of the notice must include the applicable information specified in §39.411(b)(12) and (d) [§39.411(b)(13) and (d)] of this title (relating to Text of Public Notice).

(d) For an application for a new license to dispose of by-product material under Chapter 336, Subchapter L of this title that was filed with the Department of State Health Services on or before January 1, 2007, notice under this section must be provided to the applicant, the office of public interest counsel, the executive director, and any person who timely submitted a request for a contested case hearing by mail at least 10 days in advance of the hearing.